# H.R. 3258, H.R. 3307, and H.R. 3718

# LEGISLATIVE HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL PARKS, RECREATION, AND PUBLIC LANDS

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

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# C Of N T E N T S

# H.R. 3258, To amend the Federal Lands Policy and Management Act of 1976 to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of right-of-way granted, issued, or renewed under such Act to prevent unreasonable increases in certain costs in connection with deployment of communications and other critical infrastructure; H.R. 3307, To authorize the Secretary of the Interior to acquire the property known as Pemberton's Headquarters and to modify the boundary of Vicksburg National Military Park to include that property, and for other purposes; and H.R. 3718, to authorize a right-of-way through Joshua Tree National Park, and for other purposes.

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**Thursday, April 11, 2002**
**U.S. House of Representatives**
**Subcommittee on National Parks, Recreation, and Public Lands**
**Committee on Resources**
**Washington, DC**

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The Subcommittee met, pursuant to notice, at 2:07 p.m., in room 1334, Longworth House Office Building, Hon. George Radanovich [Chairman of the Subcommittee] presiding.

**STATEMENT OF THE HON. GEORGE P. RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. RADANOVICH. Good afternoon, and welcome to our hearing today.

This afternoon, the Subcommittee on National Parks, Recreation and Public Lands will hear testimony on three bills: H.R. 3258, H.R. 3307, and H.R. 3718.

Mr. RADANOVICH. Our first bill is H.R. 3258, introduced by our Committee colleague, Barbara Cubin of Wyoming. And it would

amend the Federal Land Policy and Management Act to clarify the method by which the Secretary of the Interior and the Secretary of Agriculture determine the fair market value of rights-of-way in connection with the deployment of communications and other critical infrastructure. Welcome, Barbara.

Our second bill is H.R. 3307, introduced by Congressman Bennie Thompson of Mississippi. It would authorize the Secretary of the Interior to acquire the property known as Pemberton's Headquarters and to modify the boundary of the Vicksburg National Military Park accordingly. Bennie, welcome, and thank you for being here.

The last bill is H.R. 3718, introduced by Congresswoman Mary Bono, which would authorize the rights-of-way through Joshua Tree National Park. Welcome, Mary.

At this time I ask unanimous consent that Congresswoman Cubin, Congressman Thompson, and Congresswoman Bono be permitted to sit on the dais following their statements, and without objection, so ordered.

Once again, I appreciate representation by all folks here and appreciate all the other witnesses that will be here to testify today, and I now turn the meeting over to our ranking member, Mrs. Christensen. Donna?

[The prepared statement of Mr. Radanovich follows:]

**Statement of The Honorable George P. Radanovich, Chairman, Subcommittee on National Parks, Recreation and Public Lands, on H.R. 3258, H.R. 3307 and H.R. 3718**

Good afternoon and welcome to the hearing today. The Subcommittee will come to order. This afternoon, the Subcommittee on National Parks, Recreation, and Public Lands will hear testimony on three bills, H.R. 3258, H.R. 3307, and H.R. 3718.

Our first bill, H.R. 3258, introduced by our Committee colleague Barbara Cubin of Wyoming, would amend the Federal Land Policy and Management Act to clarify the method by which the Secretary of Interior and the Secretary of Agriculture determine the fair market value of rights-a-way in connection with the deployment of communications and other critical infrastructure.

Our second bill, H.R. 3307 introduced by Congressman Bennie Thompson of Mississippi, would authorize the Secretary of the Interior to acquire the property known as Pemberton's Headquarters and to modify the boundary of Vicksburg National Military Park accordingly.

The last bill, H.R. 3718, introduced by Congresswoman Mary Bono, would authorize the right-of-way through Joshua Tree National Park.

At this time, I ask unanimous consent that Congresswoman Cubin, Congressman Thompson and Congresswoman Bono be permitted to sit on the dais following their statements. Without objection [PAUSE], so ordered.

Once again, I appreciate Congresswoman Cubin, Congressman Thompson, and Congresswoman Bono and all the other witnesses being here to testify today and I now turn the time over to the ranking member, Mrs. Christensen for an opening statement.

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## STATEMENT OF THE HON. DONNA M. CHRISTENSEN, A DELEGATE IN CONGRESS FROM THE VIRGIN ISLANDS

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. Chairman, I want to join you in welcoming our colleagues here this afternoon and all of the other witnesses that might be attending the hearing. I thank them for their time and their efforts to help us gather necessary information on the bills before us this afternoon.

Our first bill, H.R. 3258, raises a number of serious concerns. Under the Federal Land Policy and Management Act of 1976, known to many of us as FLPMA, rights-of-way fees are to be charged at a level equal to the fair market value of the right authorized. However, in evidence in both GAO and inspector general reports, the BLM and the Forest Service charge right-of-way fees that fail to reflect the fair market value, with the result being that the public has not received the fees for this use of public resources that the law requires. Instead of correcting the problem, H.R. 3258 sets in place a cumbersome fee structure that does not reflect the fair market value and is inconsistent with fees to be charged for similar uses of public resources.

So, Mr. Chairman, I share the concerns expressed in the administration's testimony that this legislation is too costly, it is time-consuming, and it still does not provide the compensation to the American public that should be provided.

The second measure, introduced by my colleague and good friend Bennie Thompson, H.R. 3307, would authorize an important addition to the Vicksburg National Military Park. The Battle of Vicksburg was a critical chapter in the Civil War, and headquarters of the Confederate commanding officer during that battle would be an important addition to the park. It is our understanding that General Pemberton's Headquarters is some distance removed from the park, and we look forward to hearing from our witnesses regarding any management challenges that this might pose, as well as more about the history of this structure.

The final measure before us today, H.R. 3718, is troubling, Mr. Chair. Apparently, a broadcasting company purposely cut a road through a designated wilderness area to allow access to one of its radio towers. The company did this with absolutely no authority and knowing full well that the area was Federal property. Such a road would be illegal.

While H.R. 3718 purports to deal with this situation, we are concerned that the approach taken in the bill lets the company off too lightly. Instead of rewarding such behavior, we should be looking at punitive provisions to ensure that any company considering trespassing on Federally designated wilderness would think twice about such action.

Thank you, Mr. Chairman, and I look forward to the testimony of our witnesses.

Mr. RADANOVICH. Thank you, Mrs. Christensen.

With that we will go ahead and begin with our panel. Congresswoman Barbara Cubin, if you would like to start, welcome to the Committee, and we look forward to your testimony.

## STATEMENT OF THE HON. BARBARA CUBIN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WYOMING

Mrs. CUBIN. Thank you, Mr. Chairman, and thank you for scheduling H.R. 3258 for a hearing today. I appreciate your work and interest in this issue.

I know you have long been an advocate for fair and reasonable Federal land rights-of-way fees, and for that I am very pleased to be working with you and greatly appreciate your support and cosponsorship of this bill.

The Nation's system of roadways and railways were born of effective partnerships in planning and construction between the Federal Government and private industry.

Today, we face the challenge of expanding the next generation of technology and energy infrastructures to underserved areas of the country and bringing commercial benefits to citizens set apart by geographic, economic, and digital divides.

I serve as a member of the House Energy and Commerce Subcommittee on Telecommunications and the Internet. As such, I have been exploring ways to facilitate the expansion of the telecommunications infrastructure in my home State of Wyoming, as well as in other rural areas. In doing so, I became aware of a significant Federal obstacle to infrastructure development nationwide.

Recent applications of the Federal Land Policy and Management Act, or FLPMA, as we so fondly call it, have resulted in exorbitant increases in fees to cross Federal lands. Telecommunications providers, particularly those building the next generation of fiber-optic broadband infrastructure, have been specifically targeted for these fee increases, while other infrastructure providers have been put on notice of changes to come.

FLPMA requires that private uses of public lands pay a fair price for that privilege, a policy that protects the value of our Federal lands, helps ensure that these resources continue to be available to and accommodating of a multitude of compatible uses.

Recent interpretations of FLPMA, however, have motivated policies which reach beyond the value of Federal lands, attempting to associate the right-of-way to cross Federal lands with the revenues that are generated by the use of telecommunications technologies.

In the exercise of our public trust responsibilities, the Federal Government protects and preserves the public interest in our Federal lands. I am confident, however, that there is little public interest in turning our Federal lands into toll booths or road blocks on the information superhighway or along the path of any of our Nation's critical infrastructures.

In 1999 and 2000, revisions to the right-of-way rental fee schedules by the BLM and the U.S. Forest Service led to some fiber-optic telecommunications companies receiving fee increases of up to 100 to 150 times their previous annual bills.

Congress put a temporary halt to these interim revisions to existing right-of-way regulations in the Fiscal Year 2001 appropriations bill.

As the agencies process toward the rulemaking process required to change existing right-of-way fees, it is important that their responsibilities regarding the determination and collection of right-of-way fees be clear and that we avoid a reiteration of the previous misguided proposals.

A permanent solution must be found. That is why I have introduced H.R. 3258, the Reasonable Right-of-Way Fees Act.

H.R. 3258 simply clarifies the responsibilities we have to protect the value of Federal lands, explicitly limiting the fees we charge for rights-of-way to the value of those lands, the fair market value of those lands.

As a representative of the most rural State in the country, I recognize the tremendous value of the vast open spaces of our rural

West, including lands managed by the Federal Government. But these lands should not become an obstacle to the infrastructure development we so badly need. Charging fair market value for the use of Federal lands does not mean that we share in the revenues associated with the facilities that cross those Federal lands.

H.R. 3258 guarantees that Federal lands will continue to be protected as valuable national resources and ensures that these lands will not present unnecessary obstacles to infrastructure deployment and improvement.

Thank you again, Mr. Chairman, for holding this hearing. I appreciate your support of this legislation, and I look forward to hearing from the other witnesses who will testify regarding it.

[The prepared statement of Mrs. Cubin follows:]

**Statement of The Honorable Barbara Cubin, a Representative in Congress from the State of Wyoming, on H.R. 3258**

Thank you Mr. Chairman for scheduling H.R. 3258 for a hearing today. I appreciate your work and interest in this issue.

I know that you have been an advocate for fair and reasonable Federal land rights-of-way fees and for that I'm very pleased to be working with you and greatly appreciate your support for and cosponsoring of the bill.

This nation's system of roadways and railways were borne of effective partnerships in planning and construction between the Federal Government and private industry.

Today, we face the challenge of expanding the next generation of technology and energy infrastructures to under-served areas of the country, and bringing commercial benefits to citizens set apart by geographic, economic, and "digital" divides.

I serve as a member of the House Energy and Commerce Subcommittee on Telecommunications and the Internet.

As such, I have been exploring ways to facilitate the expansion of telecommunications infrastructure in my home state of Wyoming.

In doing so I became aware of a significant Federal obstacle to infrastructure development nation wide.

Recent applications of the Federal Land Policy and Management Act (FLPMA) have resulted in exorbitant increases in fees to cross Federal lands.

Telecommunications providers, particularly those building the next generation of fiber optic broadband infrastructure, have been specifically targeted for these fee increases, while other infrastructure providers have been put on notice of changes to come.

FLPMA requires that private uses of public lands pay a fair price for that privilege, a policy that protects the value of our Federal lands, helps ensure that these resources continue to be available to and accommodating of a multitude of compatible uses.

Recent interpretations of FLPMA, however, have motivated policies which reach beyond the value of Federal lands, attempting to associate the right to cross Federal lands with the revenues generated by the use of telecommunications technologies.

In the exercise of our public trust responsibilities, the Federal Government protects and preserves the public interest in our Federal lands.

I am confident, however, that there is little public interest in turning our Federal lands into toll booths or road blocks on the information superhighway, or along the path of any of our nation's critical infrastructures.

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Congress put a temporary halt to these interim revisions to existing right-of-way regulations in the Fiscal Year 2001 Appropriations bill.

As the agencies proceed toward the rulemaking process required to change existing right-of-way fees, it is important that their responsibilities regarding the determination and collection of right-of-way fees be clear, and that we avoid a reiteration of the previous, misguided proposals.

A permanent solution must be found. Therefore, I have introduced H.R. 3258, the Reasonable Right-of–Way Fees Act.

H.R. 3258 clarifies the responsibilities we have to protect the value of Federal lands, explicitly limiting fees we charge for rights-of-way to the value of those lands.

As a representative of the most rural state in the country, I recognize the tremendous value of the vast open spaces of our rural West, including lands managed by the Federal Government.

These lands should not become an obstacle to infrastructure development. Charging fair market value for the use of Federal lands does not mean a share in the revenues associated with facilities crossing Federal lands.

H.R. 3258 guarantees that Federal lands will continue to be protected as valuable national resources, and ensures that these lands will not present unnecessary obstacles to infrastructure deployment and improvement.

Again, thank you Mr. Chairman for holding this hearing. I appreciate your support for this legislation and I look forward to hearing from the other witnesses.

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Mr. RADANOVICH. Thank you very much, Barbara.

Next is the honorable Bennie Thompson from the 2nd District of the State of Mississippi, here to speak on H.R. 3307. Welcome, Congressman. You may begin.

**STATEMENT OF HON. BENNIE THOMPSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI**

Mr. THOMPSON. Thank you, Mr. Chairman. I appreciate the opportunity to present my views on H.R. 3307, which would authorize the Secretary of the Interior to acquire the property known as Pemberton's Headquarters and to modify the boundary of the Vicksburg National Military Park to allow for the inclusion of that property.

In 1895, Union and Confederate veterans organized the Vicksburg Military Park Association to petition Congress to establish a national military park at Vicksburg comparable to those previously established at Chattanooga, Shiloh, and Gettysburg. These veterans of the siege of Vicksburg recommended that the headquarters of both Union Major General Ulysses S. Grant and Conference General John Pemberton be included in the park. However, when Congress enacted the legislation establishing the park in 1899, it simply charged park commissioners to "mark with historical tablets...the headquarters of General Grant and of General Pemberton."

It is important to note that, when the enabling legislation was passed, the building that had served as General Pemberton's Headquarters was a private residence. As Congress at that time was reluctant to condemn property with private housing on it for public use, Pemberton's Headquarters, located in the heart of the city's historic district, was excluded from the park. However, the site of Grant's Headquarters, located in the proximity of the Union siege lines around Vicksburg, was incorporated into the park.

In 1990, new legislation charged Vicksburg National Military Park "to interpret the campaign and siege of Vicksburg from April 1862 to July 4, 1863, and the history of Vicksburg under the Union occupation during the Civil war and Reconstruction." Thus, the park finds itself today with its interpretive mission greatly expanded, but without the facilities and means to fulfill this legislated mandate. Acquisition of Pemberton's Headquarters would provide the park with the facilities it needs to allow it to address the expanded mandate and, at the same time, to finally fulfill the

desire of the veterans themselves who sought to include the building within the park.

My understanding is that a preliminary interpretive plan has been developed by the staff at Vicksburg National Military Park which proposes developing such interpretive themes as: "The Military Significance of Vicksburg during the Civil War," "The Role of Blacks and Black Troops in the Siege and Defense of Vicksburg," "Military Occupation of Vicksburg," "Reconstruction in Vicksburg," and "Work of the Freedom's Bureau." Walking tours could also be conducted from Pemberton's Headquarters to other historical sites, many of which have African American significance, throughout downtown Vicksburg.

Acquisition of Pemberton's Headquarters by the National Park Service has long been a desire of the Mayor and Board of Aldermen of Vicksburg and the Warren County Board of Supervisors and the State Historic Preservation Office, who is represented here today by Kenneth H. P'Pool, Deputy State Preservation Officer for Mississippi and Director of the Historic Preservation Division of the Mississippi Department of Archives and History. The Honorable Robert M. Walker, former Mayor of Vicksburg, voiced his strong interest in the National Park Service acquiring the Pemberton Headquarters that it may serve as the catalysts for the establishment of a United States Colored Troops National Research Center in the nearby Southern Heritage Cultural Center. The current mayor, the Honorable Laurence Leyen, supports the idea as well. In addition to this, H.R. 3307 has the support of the entire Mississippi congressional delegation.

The interests of Vicksburg/Warren County as well as those of the Nation would be well served in this acquisition, restoration, and operational of the Pemberton Headquarters by the National Park Service.

Mr. Chairman, in closing, it is important to note that the funds necessary to facilitate the start of this project, the acquisition and minimum restoration, have already been appropriated in the Fiscal Year 2002 Department of Interior and Related Agencies Appropriations Act. Under last year's act, $500,000 was dedicated to this project, and it is my understanding that modest future funds will be required to complete the restoration and to cover annual maintaining and operating cost.

Again, Mr. Chairman, I urge the Committee to support H.R. 3307.

Thank you very much.

[The prepared statement of Mr. Thompson follows:]

**Statement of The Honorable Bennie G. Thompson, a Representative in Congress from the State of Mississippi on H.R. 3307**

Mr. Chairman, I appreciate the opportunity to present my views on H.R. 3307, which would authorize the Secretary of the Interior to acquire the property known as the Pemberton's Headquarters and to modify the boundary of the Vicksburg National Military Park to allow for the inclusion of that property.

In 1895, Union and Confederate veterans organized the Vicksburg National Military Park Association to petition Congress to establish a national military park at Vicksburg comparable to those previously established at Chickamauga/Chattanooga, Antietam, Shiloh, and Gettysburg. These veterans of the Siege of Vicksburg recommended that the headquarters of both Union Major General Ulysses S. Grant and Confederate Lt. General John C. Pemberton be included in the park. However,

when Congress enacted the legislation establishing the park in 1899, it simply charged park commissioners to "mark with historical tablets...the headquarters of General Grant and of General Pemberton."

It is important to note that, when the enabling legislation was passed, the building that had served as General Pemberton's headquarters was a private residence, lived in by respective citizens. As Congress at that time was reluctant to condemn property with private housing on it for public use, Pemberton's headquarters, located in the heart of the city's historic district, was excluded from the park. However, the site of Grant's headquarters, located in the proximity to the Union siege lines around Vicksburg, was incorporated into the park.

In 1990, new legislation (P.L. 101–442) charged Vicksburg National Military Park "to interpret the campaign and siege of Vicksburg from April 1862 to July 4, 1863, and the history of Vicksburg under the Union occupation during the Civil War and Reconstruction." Thus, the park finds itself today with its interpretive mission greatly expanded, but without the facilities and means to fulfill this legislated mandate. Acquisition of Pemberton's Headquarters would provide the park with the facilities it needs to allow it to address this expanded mandate and, at the same time, to finally fulfill the desire of veterans themselves who sought to include the building within the park.

Pemberton's Headquarters is a registered National Landmark. Its location next to the Balfour House, which served as headquarters for the Union occupation forces, and only four blocks from the historic Warren County Courthouse where military administration of the occupied city was conducted through Reconstruction, makes the Pemberton House ideally situated for the park to address its expanded interpretive mandate. It is also centrally located for National Park Service to administer its outlying park units in and around Vicksburg.

Its current owner has recently restored the building and, should the National Park Service acquire it, will need only minimal restoration for historical accuracy.

My understanding is that a preliminary interpretive plan has been developed by the staff at Vicksburg National Military Park which proposes developing such interpretive themes as: "The Military Significance of Vicksburg During the Civil War," "Construction of Confederate Fortifications," "Citizens Under Siege," "The Role of Blacks and Black Troops in the Siege and Defense of Vicksburg," "Surrender of Vicksburg," "Military Occupation of Vicksburg," "Reconstruction in Vicksburg," and "Work of the Freedom's Bureau." Walking tours could also be conducted from Pemberton's Headquarters to other historical sites, many of which have African–American significance, throughout downtown Vicksburg.

Both the Vicksburg Riverfront and the Cultural Landscape Study issued by the National Park Service Rivers, Trails, and Conservation Assistance Program (1982) and the Chadbourne Study (1993) cite the need for the linkage between the Vicksburg National Military Park and the historic district as a means of enhancing economic development of the downtown area. Acquisition of Pemberton's Headquarters by the National Park Service would have significant economic impact on the City of Vicksburg. The park currently attracts up to 1.2 million visitors a year, most of who do not venture into the city's downtown historic district where they can visit museums, antebellum tour homes, shops, restaurants, and hotels. This will spur economic development and create new jobs in an array of businesses that hire mainly minorities employees.

Acquisition of Pemberton's Headquarters by the National Park Service has long been the desire of the Mayor and Board of Alderman of Vicksburg and the Warren County Board of Supervisors and the State Historic Preservation Office, who is represented here today by Kenneth H. P'Pool Deputy State Preservation Officer for Mississippi and Director of the Historic Preservation Division of the Mississippi Department of Archives and History. The Honorable Robert M. Walker, former Mayor of Vicksburg, voiced his strong interest in the National Park Service acquiring the Pemberton's Headquarters, that it may serve as the catalysis for the establishment of a United States Colored Troops National Research Center in the nearby Southern Heritage Cultural Center. The current mayor, the Honorable Laurence Leyen supports this idea as well. In addition to this, H.R. 3307 has the support of the entire Mississippi Congressional Delegation.

The interest of Vicksburg/Warren County as well as those of the nation would be well served in the acquisition, restoration, and operation of the Pemberton's Headquarters by the National Park Service.

Mr. Chairman, in closing, it is important to note that the funds necessary to facilitate the start of this project, the acquisition and minimum restoration, have already been appropriated in the Fiscal Year 2002 Department of the Interior and Related Agencies Appropriations Act (House Report 107–234). Under last year's act, $500,000 was dedicated to this project and it is my understanding that modest fu-

ture funds will be required to complete the restoration and to cover annual maintaining and operating cost.

Again Mr. Chairman, I urge the Committee to support H.R. 3307. That concludes my statement.

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Mr. RADANOVICH. Thank you very much, Congressman Thompson.

Next up to speak on H.R. 3718, a bill to authorize right-of-way through the Joshua Tree National Park, and for other purposes, the Honorable Mary Bono, District 44 of California. Welcome, Mary.

**STATEMENT OF THE HON. MARY BONO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mrs. BONO. Thank you, Mr. Chairman. I would like to thank you for holding a hearing on this bill, H.R. 3718, the Little San Bernardino Mountains Right-of-Way Act.

In 1986, R Group Broadcasting, a locally owned and operated company, purchased land for a tower facility located on Indio Hills, adjacent to what was then Joshua Tree National Monument and is now Joshua Tree National Park. An access road of seven-tenths of a mile long going through the monument area, zoned as wilderness, was already present. In 1987, as R Group began to make improvements to the road to better access their transmissionsite, they were informed by then-Superintendent Rick Anderson that they could not continue with their improvements on the wilderness section of the road.

After negotiating with Superintendent Anderson, R Group received approval by the superintendent for use of the road on the condition of installing a gate, maintaining the road, and running public service announcements for Joshua Tree. For all intents and purposes, R Group believed it had legal access to their transmissionsite.

However, approximately 10 years later, in 1997, the new and current superintendent, Ernest Quintana, informed R Group they had no such right because Superintendent Anderson did not have authority to grant a right-of-way. Other options, such as access by pack mule or admittance through another direction, were not feasible or permitted under law.

After months of work, it was determined that the Secretary of the Interior needed congressional authorization to grant a right-of-way for this seven-tenths of a mile. Therefore, as I did during the successful process of constructing the Santa Rosa and San Jacinto National Monument legislation, I brought together Superintendent Quintana and representatives of the Park Service, along with the owners of the radio station, to find a fair and equitable solution.

According to the Park Service, the additional impacts to this road would be minimal, so, therefore, as long as fair compensation would be made, they urged and supported granting a right-of-way by congressional action.

R Group, through its two radio stations in the Cochella Valley, plays a vital role in our community. In addition, they have been very good stewards of this land and have every intention to continue in this very same spirit. So while I am not a proponent by

any means of creating roads through wilderness, I believe the existence of the road during purchase of the land and the short length of it warrant consideration.

I realize this is a unique circumstance and, therefore, look forward to working with the Committee and the Park Service and other environmental interests on improving this legislation. For instance, we could consider adding a reasonable and comparable section of wilderness owned by R Group in this vicinity. This could provide additional protection for an area all of us in Southern California cherish and is a win-win for all parties. I am also willing to entertain other sensible additions to this legislation.

Again, thank you very much for consideration of H.R. 3718, and I look forward to a continued dialog with you, Mr. Chairman, as well as both sides of the aisle, to bring closure to this long and protracted situation.

Thank you.

[The prepared statement of Mrs. Bono follows:]

**Statement of The Honorable Mary Bono, a Representative in Congress from the State of California, on H.R. 3718**

The CHAIRMAN.

I would like to thank you for holding a hearing on my bill, H.R. 3718, the Little San Bernardino Mountains Right-of–Way Act.

In 1986, RM Group Broadcasting (then R Group Broadcasting), a locally owned and operated company, purchased land for a tower facility located on Indio Hills adjacent to what was then Joshua Tree National Monument and now is Joshua Tree National Park. An access road 7/10ths of a mile long going through the Monument area zoned as wilderness was already present. In 1987, as RM Group began to make improvements to the road to better access their transmission site, they were informed by then Superintendent Rick Anderson that they could not continue with their improvements on the wilderness section of road. After negotiating with Superintendent Anderson, RM Group received approval by the Superintendent for use of the road on the condition of installing a gate, maintaining the road and running public service announcements for Joshua Tree. For all intents and purposes, RM Group believed it had legal access to their transmission site.

However, approximately ten years later, in 1997, the new and current Superintendent, Ernest Quintana, informed RM Group they had not such right because Superintendent Anderson did not have authority to grant a right of way. Other options, such as access by pack mule or admittance through another direction, were not feasible or permitted under law.

After months of work, it was determined that the Secretary of the Interior needed Congressional authorization to grant a right of way for this 7/10ths of a mile. Therefore, as I did during the successful process of constructing the Santa Rosa and San Jacinto National Monument legislation, I brought together Superintendent Quintana and representatives of the Park Service, along with the owners of the radio station, to find a fair and equitable solution. According to the Park Service, the additional impacts to this road would be minimal so therefore, as long as fair compensation was made, they urged and supported granting a right-of-way by Congressional action.

RM Group, through its two radio stations in the Coachella Valley, plays a vital role in our community. In addition, they have been good stewards of this land and have every intention to continue in this same spirit. So, while I am not a proponent of creating roads through wilderness, I believe the existence of the road during purchase of the land and the short length of it warrant consideration.

I realize this is a unique circumstance and therefore look forward to working with the committee and the Park Service on improving this legislation. For instance, it has been suggested that we consider adding a reasonable and comparable section of wilderness owned by RM Group in this vicinity. This could provide additional protection for an area all of us in Southern California cherish and is a win-win for all parties. I am also willing to entertain other sensible additions to my legislation.

Again, thank you for your consideration of H.R. 3718 and I look forward to a continued dialogue to bring closure to a long and protracted situation.

Mr. RADANOVICH. Thank you, and thanks to all three of you for your testimony. You are welcome to join us on the dais as we introduce the next panel to hear these bills. Thank you very much.

Mr. RADANOVICH. The next panel is Mr. Peter Culp, Assistant Director of Minerals, Realty and Resource Protection from the Bureau of Land Management, and Mr. Durand Jones, Deputy Director of the National Park Service.

Welcome, gentlemen. Mr. Culp, if you would like to begin your testimony, you are here to speak on H.R. 3258, which is Congresswoman Cubin's bill, and it is so long, I am not going to repeat it. But I am sure you know what the subject matter is. Go ahead.

**STATEMENT OF PETE CULP, ASSISTANT DIRECTOR, MINERALS, REALTY AND RESOURCE PROTECTION, BUREAU OF LAND MANAGEMENT, WASHINGTON, D.C.**

Mr. CULP. Thank you, Mr. Chairman and members of the Committee. I appreciate the opportunity to appear here today to discuss H.R. 3258.

The Department is committed to working with our stakeholders and with the Congress to ensure that right-of-way rental fees on public lands are appropriate and fair, and that there is certainty in right-of-way rental fee valuation. We believe that the existing land-based linear right-of-way rental fee schedule established by regulations in 1986 and the rental fee schedule for nonlinear communications facilities right-of-ways established by separate regulations in 1995 can continue to be an appropriate basis for the derivation of right-of-way rental fees, with appropriate annual adjustments for inflation.

I want to emphasize that the 1986 schedule is a land-based schedule, that is, it determines a rental fee that starts with the value of the land, and that is the same principle that Congresswoman Cubin spoke about just a few minutes ago, as opposed to some other interpretation of fair market value. So the underlying principle is the same.

We are concerned that the proposed bill would require a more time-consuming, multiple-appraisal process for each right-of-way before its issuance or renewal, and would establish a different standard for rental fees for rights-of-ways under FLPMA as opposed to the other kinds of rights-of-ways that we issue under the Mineral Leasing Act that primarily involve oil and gas pipelines. Also, we have a concern that the bill could delay rather than expedite the processing of right-of-ways authorized by FLPMA, especially electric transmission lines, and that is, again, a reflection on the complexity of having to do three appraisals and then determining the lowest of the three.

We recognize that the rental fee issue can be and has very much been a contentious issue for at least the last 2 years. We and the Forest Service have engaged in dialogs with our stakeholders, appraisal organizations, interest groups and industry on the subject of rental fees. We are definitely interested in continuing to work with all of our stakeholders and the Congress to ensure fairness and certainty in right-of-way rental fees on public lands.

We do administer a large number of rights-of-ways, 63,000 under FLPMA and 24,000 under the Mineral Leasing Act. The Forest

Service administers approximately 24,000 FLPMA right-of-ways and 1,000 Mineral Leasing Act right-of-ways. These rights-of-ways, of course, often cross both Federal lands and private and State lands.

Prior to 1986, we did use an appraisal process, but then we adopted the current land-based schedule primarily as a method of efficiency for setting the rental fees, and I won't go into how the schedule works because that is covered in my testimony for the record. But it is land-based.

We did have audits in 1995 and 1996 which questioned whether we were obtaining fair market value, and those did lead to some proposals to do market studies that the Congress was concerned about, and, in fact, there was language in the 2001 appropriations which told us not to do that. And, again, I want to emphasize that that is not the direction we propose to go at this point unless it was the consequence of a lot more discussion with our stakeholders and the Congress.

So just to repeat in the few seconds that I have left, the concern here is with the complexity of the three-appraisal process and the time that would be required to implement it. And we very much want to continue the dialog with our constituents and the Congress on this process. We appreciate the opportunity to be here today.

[The prepared statement of Mr. Culp follows:]

**Statement of Pete Culp, Assistant Director, Minerals, Realty & Resource Protection, Bureau of Land Management, on H.R. 3258**

Mr. Chairman and members of the Committee, thank you for the opportunity to appear here today to discuss the methodology by which the Secretaries of Interior and Agriculture determine the fair market value of rights-of-way (ROW), and to present the Department of the Interior's views on H.R. 3258, the "Reasonable Right-of–Way Fees Act of 2001."

The Department is committed to working with our stakeholders and Congress to ensure that ROW rental fees on public lands are appropriate and fair, and that there is certainty in ROW rental fee valuation. We believe that the existing land-based linear ROW rental fee schedule established by regulations in 1986 and the rental fee schedule for nonlinear communication facility ROW established by regulations in 1995 can continue to be an appropriate basis for derivation of ROW rental fees, with periodic adjustments for inflation.

The Department is concerned that the proposed bill would not allow for fair market value rates of return for rights-of-way on the public lands as required by the Federal Land Policy and Management Act (FLPMA); would require a time-consuming, multiple appraisal process for every ROW before issuance or renewal; and would establish a different standard for establishing rental fees for rights-of-way authorized by FLPMA (generally involving roads, electrical transmission lines, and telecommunication facilities) and rights-of-way authorized by the Mineral Leasing Act (which primarily involve oil and gas pipelines). In addition, we believe that this bill may be inconsistent with the goals of the Department in that it would delay, rather than expedite, the processing of ROWs authorized by FLPMA, especially electric transmission lines.

The Department realizes that ROW rental fees can be a contentious issue. For at least the last two years, the Bureau of Land Management (BLM) and the Forest Service (FS) have engaged in dialogues with our stakeholders, including appraisal organizations, ROW interest groups and industry, on the subject of linear right-of-way rental fee issues. The BLM and the FS also worked with industry and the congressionally-established Radio and Television Use Fee Advisory Committee to finalize regulations in 1995 for rental fee schedules for nonlinear rights-of-way for various communication facilities on the public lands. As mentioned, the Department is committed to continuing to work with our stakeholders and Congress to ensure fairness and certainty for ROW rental fees on public lands.

RIGHTS-OF–WAY BACKGROUND

BLM and FS lands are managed for a variety of multiple uses, including the location of ROWs that are a vital part of our nation's infrastructure for telecommunications purposes and for the delivery of critical energy supplies. This ROW infrastructure is a significant component of our nation's interstate commerce, as well as our national defense and homeland security. Due to our nation's increasing demand for energy, the need for energy-related ROWs also will increase.

The BLM processes approximately 6,000 right-of-way (ROW) actions each year, including the issuance of 2,700 ROW grants and amendments. Currently, the BLM administers approximately 63,000 ROWs authorized under FLPMA and 24,000 ROWs authorized under Mineral Leasing Act. The FS, meanwhile, administers approximately 24,000 FLPMA ROWs and 1,000 MLA ROWs on Forest land. Both BLM and FS right-of-ways also cross state and other non-federal landowners. Of the total BLM authorized ROWs, about 21,000 FLPMA and 23,000 Mineral Leasing Act ROWs are currently subject to the collection of rents. The remaining ROW authorizations are not subject to rent, either due to statutory exemptions or because they meet other rent reduction regulatory criteria.

RIGHTS-OF–WAY RENTS

Prior to 1986, the BLM and FS carried out their respective responsibilities for collecting market rent from ROW users by making appraisals for each separate ROW. In order to reduce overall administrative costs, and to make ROW processing more timely and consistent, the BLM and FS in 1986 established the linear ROW rent schedule that is still in use today.

The current linear ROW rental schedule is based on the following three factors:

1) An average land value for the linear ROW facility, using county boundaries and zones (based on market data in 1986, each county in the lower forty-eight states was placed in one of eight land valuation categories or zones);
2) An impact adjustment factor of either 80% (generally for roads and oil and gas pipelines) or 70% (generally for electric transmission and telecommunication lines) based on the type of linear ROW facility to be authorized; and
3) An interest rate (6.41%) for converting the land value to a dollar-per-acre annual rental for each land value zone.

In addition, the current linear ROW rental schedule has been adjusted annually since 1986 using the annual percentage change in the Implicit Price Deflator, Gross National Product Index (IPD). Proposals to Revise Current Linear ROW Rent Schedule

The BLM and FS implementing regulations of 1986 state "that at such time that the cumulative change in the IPD index exceeds 30% .... the zones and rental per acre figures shall be reviewed to determine whether market and business practices have differed sufficiently from the index to warrant a revision in the base zones and rental per acre figures." This threshold was exceeded in 1995 and the cumulative change in the IPD index now stands at 45% for calendar year 2002.

A 1995 Department of the Interior's Office of the Inspector General report (Audit No. 95–1–747) and a 1996 General Accounting Office report (GAO/RCED–96–84) indicated that the linear rent schedule used by BLM and the FS at the time of the audits did not reflect fair market value. These findings prompted the BLM and the FS to begin to engage in discussions regarding the rent schedule values. These discussions have most recently involved a December 2001 workshop sponsored by the Appraisal Institute that involved the BLM, FS, industry and other interest groups, and congressional staff. Any further efforts by the BLM and the FS to continue any fair market value studies regarding linear rights-of-way are currently on hold pending additional dialogue with our stakeholders and Congress.

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The Department's concerns regarding the legislation generally center on its elimination of the existing linear rental fee schedule (1986) and the communication facilities ROW rental fee schedule (1995), and the requirement that time-consuming and costly multiple appraisals be completed for every ROW before issuance or renewal. The legislation also would establish an inconsistent process to determine rental fees for FLPMA rights-of-way different than rental fees for Mineral Leasing Act rights-of-way.

The bill requires the BLM and FS to conduct three valuations to determine the value for FLPMA rights-of-way. First, the agencies would be required to do an

appraisal of the lands crossed by a proposed ROW use. Second, another appraisal would be conducted to determine the loss of value in the lands crossed by the proposed use. Third, a reclamation plan for the project would have to be conducted to determine the costs to be incurred at the end of the grant term. Only after these three valuations are completed, and the lowest amount is determined, will involved Federal agencies be able to establish the rental for a FLPMA ROW.

The administrative costs to process an application and the multiple appraisals would be extraordinary—potentially increasing several fold. Also, for lengthy linear ROW projects, it will be especially problematic to determine the current values of the multiple parcels of land that a ROW crosses. The costs of these additional appraisals inevitably will be passed on to ROW applicants as part of the Federal Government's costs in processing a ROW. Such timely and costly impediments to ROW processing are inconsistent with the Department's goal to expedite the processing of rights-of-way—especially energy-related rights-of-way.

The Department wishes to continue to engage in discussions with all interested parties, including Congress, to ensure that ROW fee schedules for BLM and FS lands are consistent, fair and promote timely consideration of ROW applications.

CONCLUSION

Mr. Chairman, thank you for the opportunity to testify before you today. I would be pleased to answer any questions that you or the other members of the Subcommittee may have.

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Mr. RADANOVICH. I think in the order of the hearing, we are going to take questions on this single bill, and then move to Mr. Jones on the two remaining bills first. So I am going to defer on any questions right now, but would defer to Mrs. Christensen to begin questioning, if you have any questions.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. Culp, with the GAO and inspector general reports showing that the agencies are not receiving fair market value, why has it taken 6 years, over 6 years for the BLM and Forest Service to reach an agreement as to how to correct this situation?

Mr. CULP. I think that there is an awful lot of room for very reasonable people to disagree on what fair market value is and what the underlying basis for it should be. And that has led to this relatively long period of rather contentious debate—

Mrs. CHRISTENSEN. Very long.

Mr. CULP. —about what these fees should be.

Mrs. CHRISTENSEN. It just seems like an inordinately long period of time and that someone should have made a decision at some point to move ahead.

How do the right-of-way fees charged by BLM and the Forest Service compare with those charged by State and private landowners?

Mr. CULP. The reference point would have to be the studies done by GAO and the inspector general. In most of their examples in their studies, they concluded that the fees charged by private landowners and by States were higher than the Federal fees. There were a few examples that worked the other way, but most—

Mrs. CHRISTENSEN. Were the State fees generally lower than private fees?

Mr. CULP. I don't know the answer to that. We could check to see if the data is differentiated—it is differentiated that way. I just don't know the answer offhand, but I could get it for you.

Mrs. CHRISTENSEN. I would appreciate that. I would like to know the answer to that.

Mr. CULP. All right.

Mrs. CHRISTENSEN. If it is OK with you, Mr. Chair.

Mr. RADANOVICH. Yes.

Mrs. CHRISTENSEN. Thank you. I don't have any other questions.

Mr. RADANOVICH. Thank you, Mrs. Christensen.

If there is no objection, shall I defer to Mrs. Cubin. Barbara?

Mrs. CUBIN. Thank you, Mr. Chairman, and thank you to the Committee for—

Mr. RADANOVICH. You are very fortunate that you were able to jump ahead of all of them.

Mrs. CUBIN. I really am, and I won't forget it, guys.

[Laughter.]

Mrs. CUBIN. Mrs. Christensen, I wanted to answer one of the questions you asked, whether or not the Federal land right-of-way fees were higher or lower than private. Well, usually what happens in a private situation, the company buys the right-of-way, so it is a one-time payment. In the public lands, it is an annual fee. So it is really hard to compare whether it is more or less, but usually, you know, it is a much higher price at one time because it is a one-time event.

Mrs. CHRISTENSEN. If I may ask, and the States, do the States charge a fee?

Mrs. CUBIN. Yes, they do, and I think it just depends on where you are how the fee relates to the Federal fee.

The reason I bring this bill is that what we are talking about are existing right-of-ways and wanting to be able to develop with telecommunications and pipelines and whatnot, develop areas all across the country. And so I am very happy, Mr. Culp, with the statement that you made at the very end that the only problem you have with the bill is the complicated process of the three different appraisals, because the intent of the bill is not to require three different appraisals, but to allow the BLM and the Forest Service to use any one of those three appraisals. And if we have not worded it well, we can reword that.

I would suspect while it says "or the lowest of the appraisals," that it would be the company that would pay for additional appraisals if they thought the method that was used in determining the fee was too high. So it would not require three appraisals by the Government to take care of that. Actually, what my bill does is it just says do what is on the books now.

And another point that I would like to make, I think that your agency—in your testimony you note that your own regulations require you to adjust the base zones and rental per acre fees when cumulative changes exceed 30 percent. And I think that is reasonable. But I am aware that the Forest Service and the BLM policies that were implemented over the last 2 years increased these fees without adjusting the rental per acre fee. And in one case, when the pipeline—it was for fiber optics. When the pipeline was going down—it wasn't the pipeline that the fee was charged on. It was every single fiber that went through the pipe that was being charged.

And I don't think anyone can construe fair market value for right-of-ways to be based on what the commodity or what the infrastructure is used for. And so if telecommunications make a lot of money because they have more fibers going through there, one

company shouldn't be paying more for crossing the same land than another. And that is the reason for this bill.

You said that you didn't do that anymore, but I would like you to reassure me, in more than an offhanded way, that it won't be done, whether or not this bill passes, which I fully expect it will at some point.

Mr. CULP. Well, certainly I know that there was one—at one time there was a proposal for charging for individual fibers—or bundles of fibers, it might have been. We are not talking in those terms—

Mrs. CUBIN. Anymore.

Mr. CULP. —at all anymore. I absolutely agree with your comment on the effect of that. It doesn't affect the land any differently. These are very small things.

Mrs. CUBIN. Right. And the only—I mean, the situation is that across rural areas, you dig a hole in the ground, put the line in, cover it up, and 3 weeks later there is no evidence that it is even there.

You are aware, I am sure, of the case in New Mexico where a project was going to cross a very rural area, one of the most depressed economies in the State, and the project did not move forward because of the enormous fees that were going to be charged for the right-of-way, and it was based on the single-strand situation.

So I look forward to working with you, Mr. Culp, and the administration on making the language more clear so that it will be clear that all three appraisals are not required, that we just stick to fair market value.

Thank you.

Mr. CULP. We look forward to that, too, Madam Chairman.

Mrs. CUBIN. Thank you, Mr. Chairman.

Mr. RADANOVICH. Mr. Duncan?

Mr. DUNCAN. Thank you, Mr. Chairman.

Mr. Culp, how much does the BLM or how much does the Federal Government take in on these fees right now in total?

Mr. CULP. In Fiscal Year 2000, we took in $13,374,000 for FLPMA right-of-ways and just under $2 million for the Mineral Leasing Act right-of-ways. Again, that is the oil and gas pipelines, which are under a different law.

Mr. DUNCAN. And how much do you estimate that these proposed increases will increase these fees? I understand that there is at least one estimate that says that they may increase by as much as 100 times. And if they increase anything like that, I mean, you have got serious problems. And, you know, most of these increases, businesses have to pass them on to the consumer.

Mr. CULP. If we took an approach to fair market value, which in my kind of layman's terms would be get everything that you can get because somebody has to get across your property to complete a project, you could get results like that. But, again, we are very much in agreement that the basis for the fee ought to be the value of the land. Most of our land is rural, and the values are not that high. So nothing that is on the table now would result in a 100-times-fee increase. Nothing like that.

Mr. DUNCAN. Well, you say at one point you could get results like that, but then you say that you wouldn't. To businesses, those types of increases, I don't know how any business could absorb those kinds of increases.

Let me ask you this: The later testimony by Mr. Eric Myers, at one point he says that the methodologies proposed by the BLM and USFS are inconsistent with current regulations and policies applied to other infrastructure providers. And then at a later point he says, "The approach taken by Federal agencies focuses on situations where cities or other entities have incorporated franchise-like fees into required easement payments or where individual landowners have leveraged their ability to hold out or obstruct established rights across adjacent lands. These cases are exceptional and should not alter the established principles which base easement payments on the underlying property value."

What do you say in response to those comments by Mr. Myers?

Mr. CULP. I would say that we agree that the payments should be based on the underlying property value. We now agree. Some of the earlier proposals that were being talked about would have been based on a different approach and resulted in considerably higher rental fees.

Mr. DUNCAN. What do you say when he says that the proposals that you are making are inconsistent with current regulations and policies applied to other infrastructure providers?

Mr. CULP. Well, the Department's position really goes back to current regulations now. Our position is that the current regulations are a reasonable basis for the fee.

Mr. DUNCAN. All right. Thank you very much.

Mr. RADANOVICH. Does anybody else wish to speak? Mr. Gibbons?

Mr. GIBBONS. Thank you, Mr. Chairman. I have just one clarifying question I would like to ask Mr. Culp, and that is, if you will confirm for me today that current policy now of your agency is to evaluate these rights-of-ways based on the linear foot rental fee, or whatever determination that may be, linear length, versus the throughput. That is the way you are valuating it today. is that correct?

Mr. CULP. That is correct, Mr. Gibbons, because it is based on converting the width of the right-of-way to acres and has nothing to do with the amount of throughput that you could put through the electric line or the fiber-optic cable.

Mr. GIBBONS. And that is the current status of your regulations?

Mr. CULP. That is the current status.

Mr. GIBBONS. That is the only question I had, Mr. Chairman. Thank you.

Mr. RADANOVICH. Thank you very much.

Mr. Culp, if I may ask a couple of questions. On these transmission lines that we are talking about in general, that is for both telephone and telecommunications data transfer, all of the above—isn't it?—for phone companies?

Mr. CULP. That is correct. It even—

Mr. RADANOVICH. And gas.

Mr. CULP. It actually even goes to canals. Any linear right-of-way.

Mr. RADANOVICH. And as far as telecommunications, you know, obviously these lines would serve urban areas. But would the preponderance of these easements serve rural America? Can you say that, or is it basically for access to both urban and rural?

Mrs. CUBIN. Will the gentleman yield?

Mr. RADANOVICH. Sure.

Mrs. CUBIN. Well, basically because the BLM lands are mostly in rural areas, it would mostly affect rural areas.

Mr. RADANOVICH. Right. I live in a very rural area, and when you dial up the phone, you have got to wait 30 seconds for them to hook into somewhere before you get a ring. And I know that that is kind of a problem in most of rural America, getting some of these high-technology communications abilities out into the rural areas. Just keep that in mind when you are looking at assessing fees that might further hinder the progress of delivery of this telecommunications to rural America.

Mr. CULP. I agree, Mr. Chairman, that is a real issue.

Mr. RADANOVICH. OK. Thank you, Mr. Culp.

Mr. Jones? Randy, I believe it is. Randy, good to have you here with us. Before you begin your testimony on these other bills, I do have a little bit of business here, if you don't mind. It concerns an issue that we are waiting to hear back from the National Park Service regarding the Washington aqueduct in a previous hearing. It was October 30th of last year. We had hearings on the effects of the Washington aqueduct discharge upon the C&O Canal National Historic Park. And on November 27th, I wrote a letter to the Park Service with some follow-up questions that haven't been answered yet. So I would really appreciate your answers to those questions, and as quickly as possible. Both the EPA and the Army Corps have answered their questions. I am still waiting on you guys.

Mr. JONES. I understand, Mr. Chairman, and we apologize for that. I do know in the last 2 weeks there have been a series of meetings with our regional folks, the solicitor's office, as the answers are being developed. So we will have them to you very shortly.

Mr. RADANOVICH. Great. I appreciate that.

Now, if you will go ahead and begin your testimony, I believe you are here to speak on the other two bills, which would be H.R. 3307 and H.R. 3718.

**STATEMENT OF DURAND JONES, DEPUTY DIRECTOR, NATIONAL PARK SERVICE, WASHINGTON, D.C.**

Mr. JONES. Thank you, Mr. Chairman. I do ask that both my statements be submitted in their entirety for the record, and I would be happy to summarize them.

Mr. RADANOVICH. There being no objection, so ordered.

Mr. JONES. Thank you for the opportunity to present the Department of Interior's views on H.R. 3718, a bill to authorize a right-of-way through Joshua Tree National Park.

The Department supports this bill if amended to address the administration's concerns.

The legislation will authorize a right-of-way for an existing road through Joshua Tree National Park for vehicle access to RM

Broadcasting's telecommunication tower site located outside the park. The right-of-way is located in the rugged southwestern portion of the park known as the Little San Bernardino Mountains. The remoteness of this area attracts few visitors; however, Congress did designate this portion of the part as wilderness in 1976.

In 1987, R Group Management entered the park without authorization to grade a road on National Park Service land. In compliance with the Wilderness Act, the current superintendent has prohibited continued vehicle access on this route.

This legislative solution to authorize the right-of-way is preferable to eliminating seven-tenths of a mile of the road and requiring the construction of a new road outside the park. To that end, I would add that this is, we think, a fairly unique situation because what in one regard might be an obvious solution, which would be to close the park, have them relocate the road outside the park, we feel from an overall environmental point of view would result in total worse damage to the environment than just allowing this right-of-way to be recognized. The construction of a new road outside the park would further impact the surrounding environment.

We will have a series of recommended amendments to you within the next few days. As we were preparing for this hearing, the Department of Justice requested additional time to review the amendments as we had drafted them, and we, in fact, have a meeting with the Justice Department officials on Monday to review the issues involved in this case.

But, generally, the amendments that we would be proposing: one, ensure that the National Park Service would retain the authority to manage parklands and protect park resources; allow for an annual fee for the use of the right-of-way; and also allow the Secretary to ensure that the use of the right-of-way is consistent with National Park Service regulations and to collect appropriate compensation for the unauthorized entry and resource damage that has occurred from this entry.

In addition, the Department does recommend that Congress incorporate a provision to address a no net loss of wilderness. We have had some discussions with the staff on that issue, and there are several ways of addressing it. But our concern in this area is that if we are, in fact, recognizing that a small portion of the park no longer has wilderness values, we think that there are alternate lands that could be designated wilderness so that there is no net loss of designated wilderness within the park.

That does conclude my statement on that. I would be happy to move on to the other bill, or would you prefer to address questions on this one first? I serve at your pleasure.

Mr. RADANOVICH. If you would make your statement on both bills, that would be just fine, if you want to proceed with that.

Mr. Culp, you are free to go since we have discussed the bill that you were here for. Thank you for being here, and you are more than welcome to stay. But I want to give you the opportunity to leave.

Mr. Jones?

Mr. JONES. I also thank you for the opportunity to present the Department's views on H.R. 3307, which would authorize the Secretary of the Interior to acquire the property known as Pemberton's

Headquarters and modify the boundary of Vicksburg National Military Park to include the property.

The Department supports H.R. 3307. Pemberton's Headquarters is a nationally significant resource that is well suited for use as a visitor site and its inclusion within the National Park System unit.

The headquarters is the building that Confederate Lieutenant General John C. Pemberton occupied during the siege of Vicksburg during the Civil War, and it served as the Confederacy—excuse me, sir. And that particular battle was viewed as especially significant because it severed the Confederacy geographically and cut vital supply lines to the Confederate States and, thus, was pivotal in bringing about the conclusion of the war.

The national significance of Pemberton's Headquarters was recognized through its designation as a National Historic Landmark in 1976. Why this is especially timely is that while this particular site has been talked about and recommended since 1895 for protection inclusion as a unit of the National Park System, we now have an owner who is very much a willing seller and is desirous to protect the importance and the significance of this site. And funding has already been included for the acquisition of this property in the 2002 fiscal year budget to be spent pending completion of authorizing legislation.

In the interest of time, I will—oh, one last thing. H.R. 3307 includes language that would authorize the Secretary of the Interior to acquire less than one acre of additional land in the environs of Pemberton's Headquarters to use as off-street parking as well as to provide appropriate administrative facilities for park personnel to serve and protect this particular resource.

Mr. Chairman, that concludes my formal statements. I would be happy to answer any questions you may have.

[The prepared statements of Mr. Jones follow:]

**Statement of Durand Jones, Deputy Director, National Park Service, U.S. Department of the Interior, on H.R. 3307**

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on H.R. 3307, which would authorize the Secretary of the Interior to acquire the property known as Pemberton's Headquarters and to modify the boundary of Vicksburg National Military Park to include that property.

The Department supports H.R. 3307. Pemberton's Headquarters is a nationally significant resource that is well-suited for use as a visitor site, and its inclusion in Vicksburg National Military Park would enable the National Park Service to add an important dimension to the interpretation of Civil War and post–Civil War events in the Vicksburg area. The addition of Pemberton's Headquarters would entail acquisition, preservation, and operating costs that are described later in this testimony.

Pemberton's Headquarters is the building that Confederate Lt. General John C. Pemberton occupied during the siege of the city of Vicksburg led by Union Major General Ulysses S. Grant from May 19 to July 4, 1863. It was in this building that Pemberton held a council of his chief officers on July 3, 1863 to discuss plans for surrender of the city, which occurred the following day. The campaign for Vicksburg is considered by many military historians to have been the most critical campaign of the Civil War, as it severed the Confederacy geographically and cut vital supply lines to the Confederate states and thus was pivotal in bringing about the Confederacy's defeat.

The national significance of Pemberton's Headquarters was recognized through its designation as a National Historic Landmark in 1976. The building, which was constructed from 1834–1836, is located in Vicksburg's historic district. It is adjacent to Balfour House, which served as the headquarters for the Union occupation forces following the surrender and is open to the public. And, it is four blocks from the

historic Warren County Courthouse, where the military administration of the occupied city was conducted through Reconstruction. A visitor site at this location would give the National Park Service the opportunity not only to expand its interpretation of the siege of Vicksburg, but also to interpret historical events in the years immediately following the Union victory there. It would help the service fulfill legislation passed by Congress in 1990 calling on the park to "interpret the campaign and siege of Vicksburg from April 1862 to July 4, 1863, and the history of Vicksburg under Union Occupation during the Civil War and Reconstruction."

Acquisition of Pemberton Headquarters for inclusion in Vicksburg National Military Park would also fulfill the vision of the Union and Confederate veterans who, in 1895, petitioned Congress to establish a national military park at Vicksburg similar to those previously established at Chickamauga and Chattanooga, Antietam, Shiloh, and Gettysburg. Those veterans recommended that the headquarters of both Union and Confederate commanders be included in the park. However, while the site of Grant's headquarters was included in the park, that of Pemberton's was not due to the objections of the then-owner of the property. The current owner, who has used the building for a bed-and-breakfast in recent years, would now like to sell the property to the National Park Service so that its place in history will be secure.

As you know, the Department is committed to the President's priority of eliminating the National Park Service's deferred maintenance backlog and is concerned about the development and life-cycle operational costs associated with expansion of parks already included in the National Park System. With that in mind, we have some concerns about the ability of the National Park Service to assume the costs of acquiring, preserving, and operating the Pemberton Headquarters property within current budget constraints.

The National Park Service does not yet have an appraisal of the property, but the agency's land acquisition experts believe that it may cost around $600,000 to acquire. The Service also does not have an estimate of the cost of preserving the building and the grounds and making the site accessible to visitors. Stabilizing the building alone would cost an estimated $228,000, but the cost of more extensive preservation would need to be determined through studies. Those studies would cost an estimated $191,000. The Service has made a preliminary estimate that the cost of operating and maintaining the site would be approximately $425,000 annually, but actual costs would depend on a number of unknown factors, including the extent of preservation done on the site.

H.R. 3307 includes language that would authorize the Secretary of the Interior to acquire less than one acre in the environs of Pemberton's Headquarters to use for off-street parking, as well as related visitor or administrative facilities. This is a provision that was recommended by the Department in testimony before the Senate Energy and Natural Resources Committee last year, as no off-street parking currently exists at the site. This would increase acquisition, development, and operational costs of the site.

Mr. Chairman, that concludes my statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.

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**Statement of Durand Jones, Deputy Director, National Park Service, U.S. Department of the Interior, on H.R. 3718**

Mr. Chairman, thank you for the opportunity to present the Department of the Interior's views on H.R. 3718, a bill to authorize a right-of-way through Joshua Tree National Park, and for other purposes.

The Department supports H.R. 3718 if amended to address the Administration's concerns. This legislation would provide the necessary legal authority for the right-of-way.

The legislation will authorize a right-of-way for an existing road through Joshua Tree National Park for vehicle access to RM Broadcasting's telecommunication tower site located outside the park. The right-of-way is located in the rugged southwestern section of the park known as the Little San Bernardino Mountains. The remoteness of this area attracts few visitors; however, Congress designated this portion of the park as wilderness in 1976.

The right-of-way is for an existing, unimproved, roadway that traverses approximately seven tenths of a mile through Joshua Tree National Park and park wilderness. In 1987, R Group Management (a predecessor to RM Broadcasting) entered the park without authorization to grade a road on National Park Service land. In compliance with the Wilderness Act, the current superintendent prohibited vehicular use of the road. Research found that even if the area was not designated

wilderness, the National Park Service still lacked specific authority to allow this right-of-way.

The legislative solution to authorize the right-of-way is preferable to eliminating seven tenths of a mile of the road and requiring the construction of a new road outside the park.

The construction of a new road outside the park would further impact the surrounding environment and encumber RM Broadcasting.

Generally the amendments would: (1) ensure that the National Park Service retains the authority to manage parklands and resources; (2) allow for an annual fee that may go beyond a simple calculation based on the Federal regulations governing the calculation of compensation for rights-of-way and that would take into consideration that existing Federal regulations and policy do not allow private businesses to obtain rights-of-way for road access in national parks; and, (3) allow the Secretary to ensure that use of the right-of-way is consistent with National Park Service regulations and to collect appropriate compensation for the unauthorized entry and resource damage.

In addition to compensation, the Department recommends Congress incorporate a provision to address no net loss of wilderness area. As soon as the Administration completes its review of these amendments, we will transmit them to the subcommittee.

This legislation would provide the needed legal authority for the right-of-way, and if amended, would further ensure that the resources of the park are protected against damage consistent with National Park Service regulations.

This concludes my testimony. I would be glad to answer any questions you may have.

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Mr. RADANOVICH. I am going to defer any questions at this time, but I would like to ask Mrs. Christensen if she did have any.

Mrs. CHRISTENSEN. Thank you. I do have some questions.

Mr. Jones, apparently when the National Park Service officially designated this area as wilderness, described the area—when President Nixon recommended that the area be made wilderness, the National Park Service had officially described the area as roadless. And I wonder if you would describe for me or detail for me the time line for the following events: the designation as a National Monument, the designation as a National Park, and then as a wilderness; and, last, when the construction of the road and the tower took place.

Mr. JONES. OK.

Mrs. CHRISTENSEN. So beginning with when was it designated a National Monument.

Mr. JONES. I am going to have to, unfortunately, provide those for the record. I don't recall the exact dates offhand. However, the wilderness, the later dates, was designated by an Act of Congress in 1976. The trespass took place in 1987.

Mrs. CHRISTENSEN. I don't think there are any other right-of-ways or roads, road construction that have been permitted. Could you tell me if there are any existing examples of right-of-ways authorized and designated wilderness?

Mr. JONES. I am not aware of any that have happened. This in many ways, as I mentioned earlier, we think is a unique situation. Should the road have been built? No. Was it wrong to build it? Yes, it was wrong. We view it as illegal trespass upon park property. But we also view that at this point in time some of the solutions could be worse than recognizing the continuation of the road, which is why we do feel in this case it would be appropriate to recognize the road exists and allow it to continue to exist via right-of-way.

Mrs. CHRISTENSEN. The Park Service is not concerned that this is a precedent that you don't want to start by designating this,

allowing this road to continue within the wilderness, especially since it was done illegally?

Mr. JONES. It is a precedent. It is one we are very concerned of. It is one of the reasons we feel that there should be no net loss in wilderness.

There has been one precedent for Congress that I am aware of, Congress taking an action to correct a mistake of when a heavily trafficked area into the Arctic National Park was designated wilderness and it was later removed from wilderness, and alternate wilderness designated, which is the origin of why we recommend the no net loss of wilderness concept.

This situation, which is clearly recognizing a trespass road, is unique in my 30-year career at the National Park Service.

Mrs. CHRISTENSEN. Don't you think that the radio station and the people who trespassed are getting off too easily?

Mr. JONES. Well, we do feel very strongly that damages are due the United States for the trespass that occurred. One of the things that has certainly also evolved since the trespass originally occurred was the very progressive action by the counties in looking at adjacent lands outside the park, taking very positive steps to protect and dedicate green spaces and managing the adjacent lands to the park for conservation purposes, which is why when we stand back and look at the issue from the big picture, it would be a simple solution to say don't let it go through the park, build it somewhere else, but we really sincerely believe that that would result in bigger environmental damage.

There is no win-win solution, and it is trying to make the best of a very awkward situation.

Mrs. CHRISTENSEN. You had said in your statement—I guess this is sort of related to what you are saying—that this would encumber RM Broadcasting to have to relocate. That doesn't seem to be something that should be our concern. They illegally built the road. They haven't really been asked to compensate for the damages. So is your concern that it would put an unfair burden on trespassers?

Mrs. BONO. Would the gentlelady yield, please? May I clarify something here? I think we are misunderstanding that it was not, in fact, these current radio owners or operators who built the road.

Mrs. CHRISTENSEN. OK.

Mrs. BONO. It was built years prior, and I think we don't have definitive dates, and we should wait for them from the Park Service. But there is even—we are trying to get the maps from the USGS to see if, in fact, there was an old mining road there to begin with. So I think it is important to distinguish that this group is not who was responsible. And thank you for letting me borrow your time.

Mrs. CHRISTENSEN. Sure. Just for the record, even if there were a path there or some footpath, that doesn't constitute a road. So what was there and compared to what is now there, is that relevant? It is my understanding that maybe the two new towers have already been placed there, which just compounds the issue. And I will just come back on that in the next round.

Mr. RADANOVICH. Thank you very much.

Were the towers placed—they are not inside the wilderness area. It was just a portion of the road to the towers, right?

Mr. JONES. That is correct. The towers are outside the park.

Mr. RADANOVICH. OK. Thank you.

Mr. JONES. They are not on Federal land.

Mr. RADANOVICH. There is discussion about whether there was an old mine road there or that something was there prior to. Are we going to know this at some point in time?

Mr. JONES. Well, the National Park Service's position at the time the wilderness was designated believes that this area was, in fact, roadless.

Mr. RADANOVICH. That was their knowledge at that time?

Mr. JONES. Yes, sir.

Mr. RADANOVICH. Does that include abandoned roads, old roads that were once—

Mr. JONES. What I have been told by the park staff is what was in this location were trails, not a road standard.

Mr. RADANOVICH. Any questions, Mr. Gibbons?

Mr. GIBBONS. Mr. Jones, thank you for being here today. I have just two simple questions.

One, when you say no net loss of wilderness, what loss of wilderness with an existing road is there if you grant these people an easement?

Mr. JONES. The loss of wilderness as far as wilderness values and that this area—

Mr. GIBBONS. Well, I am talking about area. The road isn't being taken out of the wilderness area. The land isn't being removed. The acreage isn't changing one iota. What do you mean by no net loss?

Mr. JONES. There has been various discussion of the possibility—that one possible solution here would be the de-designation of a small area along the road from wilderness. And should that be the solution, then we would recommend that there be no net loss and that substitute lands be designated.

Mr. GIBBONS. OK. That makes sense now. If you want to avoid a precedent in this case, it would be to remove this road from the wilderness area.

Mr. JONES. Yes, sir.

Mr. GIBBONS. And then take only that seven-tenths of a mile of road width and add new wilderness into it. Is that what your proposal is?

Mr. JONES. Yes, sir.

Mr. GIBBONS. That seems like a reasonable alternative.

Mr. JONES. The land should definitely remain in the park, in our opinion, but as far as the wilderness designation, this is on the very edge, very corner of the park.

Mr. GIBBONS. And it is only seven-tenths of one mile.

Mr. JONES. That is correct. Yes, sir.

Mr. GIBBONS. It is not a very big piece of land.

Mr. JONES. No, sir.

Mr. GIBBONS. Thank you.

Mr. RADANOVICH. Mr. Souder?

Mr. SOUDER. How far outside the park is the tower?

Mr. JONES. Actually, if I could defer to the member—it is very close. Less than half a mile, as I recall.

Mrs. BONO. My staff is whispering to me that it is adjacent. Is that close enough?

Mr. SOUDER. And the area around the tower is relatively—I mean, it is in private hands. It is relatively unused, primitive land?

Mrs. BONO. Would the gentleman yield?

Mr. SOUDER. Yes.

Mrs. BONO. It is actually very similar land. It is desert land. There is nothing geographically significant, culturally significant about the land. And the radio station owners now are willing to actually even put a little bit more of their private land into wilderness in exchange to sort of sweeten the deal, if you would. And I believe—you talk about fairness. Seven-tenths of a mile, I mean, Barbara was saying how maybe she could actually run it. You know, it is a small little bit, and they are very willing—

Mr. RADANOVICH. Even Barbara?

Mrs. BONO. Even Barbara.

[Laughter.]

Mrs. BONO. Even you, Mr. Chairman.

They are very willing to accommodate, and they, too, recognize the significance of Joshua Tree National Park for our community. And I do believe, contrary to what the Deputy Director has said, I do believe this can be a win-win if we all work together on this and recognize this was a mistake that happened a long time ago, and I appreciate the gentleman for his time. And nobody is saying the mistake was OK or it was right, but as the Deputy Director has said, the best remedy is this.

And my own point—was something good and brilliant, I am sure.

[Laughter.]

Mrs. BONO. Well, I will yield back at this point.

Mr. SOUDER. Is this in the more western hilly part of the park?

Mrs. BONO. Yes.

Mr. SOUDER. And is it on the north side or the south side?

Mrs. BONO. It is on the south side, but if—

Mr. SOUDER. So in the vistas, you are looking out toward the main cities in the valley if you were standing at the tower. OK. And if you were to de-designate the seven-tenth of a mile from wilderness, is the goal of the Park Service to have whatever compensation, particularly if the company is willing to do that, be adjacent?

Mr. JONES. There are a couple of options on the wilderness. There are other parcels in the park that have gone through public involvement study, environmental assessments, that have strong local support for designation as wilderness. There is also the offer that was mentioned by the member. And so as far as compensation for the damages, it is something we need to sit down with the company and define what that appropriate compensation would be. That is something we are very interested and willing to do.

Mr. SOUDER. Because I think the only question here is really not this particular incident at this park. It is what standard it sets for wilderness and how you adjust when things like this occur.

One last question. It was unclear to me. Is it the position of the Park Service—it is implied but not stated—that the original owner of this tower should have known not to place it at that location, the road?

Mr. JONES. Yes, sir.

Mr. SOUDER. In other words, they had the maps because—or was there any lack of clarity on that part, or were there no other options, they just went ahead? Did the Park Service object at the time?

Mr. JONES. When the event occurred, it is my understanding in talking to park staff that the park staff was first aware of it approximately 4 months after the road had been bulldozed in. But it was the park staff's understanding that the company knew that they should not do it and it was not appropriate and they did not have permission to do it.

Mr. SOUDER. Mrs. Bono, do you have any—

Mrs. BONO. Thank you. I just have one question. Is it the Park Service's position that the superintendent at the time did have verbal agreements allowing this to exist?

Mr. JONES. Once the road was discovered, the superintendent at the time did issue a series of special-use permits that allowed the road to be used.

Mrs. BONO. And he, of course, being a Federal employee, there is some culpability here for the Federal Government, too. So let's not—we shouldn't continue to blame the private party, but this was sort of a wink-and-a-nod policy. And so I do believe it is in our best interest to recognize that the superintendent allowed it to continue and, therefore, further supports this legislation.

Mr. JONES. I do share the view that the superintendent did not have the authority to issue those special-use permits. They should not have been done, and I think it is--I wish I had an eloquent answer to explain why this has taken 15 years to come before this Committee to try to find an equitable solution to the issue, but I have no answer.

Mrs. BONO. So when we look at reprimanding, do we also go back and reprimand the Federal Government's part in this as well? That is the only question—

Mr. JONES. The Federal Government did not commit the trespass.

Mrs. BONO. No, just had a wink-and-a-nod policy.

Mr. JONES. We did not approve the trespass from occurring. It was a matter of how we managed and dealt with the issue after it occurred.

Mrs. BONO. Correct. All right. Thank you.

Mr. RADANOVICH. I am really not clear about this now, but did the Park Service permit the owners of the radio station to have access to their tower through this property?

Mr. JONES. The National Park Service did not approve the road before it was built. We had no knowledge that it was going to be done. It was done by the company.

Mr. RADANOVICH. No, I mean prior to that time, did they permit them access to the tower across this property?

Mr. JONES. No, sir; to the best of my knowledge, we did not.

Mr. RADANOVICH. Mary, what was the—

Mr. SOUDER. Was the road built at the time the tower was built? That is one of the—

Mr. RADANOVICH. No. What I am wondering is: Did the Park Service allow this company to have access to the tower prior to the time that the existing road that is there now was cut?

Mr. JONES. Not be vehicles. I do not know if there was hiking access or stock access.

Mr. RADANOVICH. So the question was: After the road was cut, the Park Service did allow the radio station access to that road?

Mr. JONES. That is correct. After it was built.

Mrs. BONO. Mr. Chairman, I would like to submit for the record a letter from the Department of the Interior that actually puts in writing specific requirements that would allow them to continue if they would install a fence or a gate across the wash, maintained by R Group Management Company as necessary, and the gate will be designed so that a National Park Service lock may be installed.

You know, I agree there are a lot of questions that don't necessarily come to the same conclusion here, but I will submit this for the record that does prove that perhaps they didn't allow—or have prior knowledge of the bulldozing, but once it was in, they did allow it and didn't address the problem.

Mr. SOUDER. If the gentlelady would yield, what is the date on the letter?

Mr. RADANOVICH. There being no objection, no problem with your testimony submitted.

Mr. RADANOVICH. Go ahead.

Mrs. BONO. It is November 24, 1987.

[The letter submitted for the record by Mrs. Bono follows:]

United States Department of the Interior
NATIONAL PARK SERVICE
JOSHUA TREE NATIONAL MONUMENT
74486 NATIONAL MONUMENT DRIVE
TWENTYNINE PALMS, CALIFORNIA 92277-3597

IN REPLY REFER TO:

L24

November 24, 1987

Tom Harding, Project Manager
R Group Management Company
836 Prospect, Suite 202
La Jolla, California 92037

Dear Mr. Harding:

Pursuant to our conversation on Monday, November 23, I have contacted our Washington office regarding ownership of Section 35, T3S, R 7E San Bernardino Basin and Meridian. They advised that that portion of Section 35 north of the MWD Aqueduct was conveyed to the National Park Service from Southern Pacific Land Company in the early 1930's. With regard to R Group Management Company's trespass on lands of the National Park Service, Joshua Tree National Monument (Sections 35 and 26 T3S, R 7E) the damage has been done. As you are aware, these lands were legislated as wilderness by Congress by Public Law 94-567, October 20, 1976.

The National Park Service will not pursue court action at this time if the following conditions are agreed to by R Group Management Company. First, road grading will be conducted in such a way that graded material will be contoured as best as possible in order to provide a more natural appearance. No further general maintenance on the road will be conducted without notifying and obtaining permission from the National Park Service, Joshua Tree National Monument. A fence/gate will be installed across the wash at the approximate boundary of the Monument and constructed by such means that will prevent access by off-road vehicles. This fence/gate will be maintained by R Group Management Company as necessary and the gate will be so designed that a National Park Service lock may be installed for National Park Service access.

As personnel of the KPLM FM Broadcasting Station will need weekly access to the transmitter site, the provisions for the National Park Service to allow such access are as follows. The KPLM FM Broadcasting Station will broadcast daily during prime time public service announcements pertaining to the preservation and use of National Park Service and other public federally owned lands. R Group Management Company should recognize that the National Park Service has an extreme concern for the preservation of resources it has been mandated to protect; therefore, any additional methods that the company can take to mitigate impacts on the resources should be conducted.

If R Group Management Company agrees to these conditions which will remain in effect indefinitely, please respond with a positive reply.

Sincerely,

Rick Anderson
Superintendent

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Mr. RADANOVICH. Whose time are we on here?

Mrs. BONO. Yours, Mr. Chairman.

Mr. RADANOVICH. Donna? I yield to Mrs. Christensen.

Mrs. CHRISTENSEN. I know recently I have been trying to get my park superintendent to do something for me, and that is out of his authority. So I am not sure that the park superintendent had the authority to write the letter and give that permission.

Mr. RADANOVICH. Mary, you have not been recognized during this whole time, so I want to give you the time to go ahead and question the witness or make any statement that you would like.

Mrs. BONO. Thank you, Mr. Chairman. I feel like I have been recognized, so thank you all for yielding time to me. And I would like to actually thank the Deputy Director for your help with this and, again, state that it is not my—I do not want to see roads cut in wilderness area. I believe this is a very difficult problem, but as you have so well stated, too, if we go in and tear all of this up, it is going to damage the land further, and that is not an answer.

What is important to me, I guess, is that we recognize this, I don't want to set precedent, but I do want to address the policy issues. And I want to thank also the people from the Park Service on the local level, John Reynolds from the regional office and Superintendent Quintana who came to my office to work on this issue. You have been very responsive and helpful, and I appreciate this.

I look forward to continuing to work with the environmental community as well. As you have also said, this land is adjacent to other lands that are trying to be preserved, and so this whole sort of mess has happened. But I believe this is a good answer, and I look forward to working with the ranking member toward resolving it.

Mr. RADANOVICH. Thank you very much. We do have another panel. If there are no other questions, we will move on to the next panel. Mr. Jones, thank—oh, one more question.

Mrs. CHRISTENSEN. You talked about expanding the wilderness, and I am not—how much additional land will have to be taken in for it to constitute a wilderness? Because you shouldn't see a road—it wouldn't just be a matter of a small portion of land, would it?

Mr. JONES. As a result of the wilderness studies we have been doing in the park, we would be happy to provide the Committee with several tracts that have been identified that have wilderness

potential, that have gone through a formal study and public review process, a total of several thousand acres, potential acreage that could be identified.

Mrs. CHRISTENSEN. I wanted to just explore another alternative. Could the park boundary be altered so that that road was not in the park and then make up for it?

Mr. JONES. That is where we get into feeling that that would be a very bad precedent, because we would hate to think that by someone committing a trespass as a way to have national park lands removed from the National Park System.

Mrs. CHRISTENSEN. If it is indeed true that the two towers, the new two towers are already up there, would that change your position with regard to allowing the road to remain there?

Mr. JONES. I guess I—

Mrs. CHRISTENSEN. My original information was that there is one old tower; they were asking for permission to put up two new towers. That permission was granted by—I guess it is Riverside County—Riverside County but with the condition that they receive the Park Service's allowance to go ahead and do that. But I have also heard that the two new towers are already put up and the old one is down.

Mr. JONES. The concern, I think, as I understand it, as far as the reason for the condition of approval, gets at the fundamental issue of having potentially even greater resource impact if they were to build new roads outside the park. And that is a view we share.

Mrs. CHRISTENSEN. Why is there more damage by building new roads outside of the park than inside of the park? And why is the Park Service concerned about that?

Mr. JONES. We are concerned because we have worked very carefully with the local county in its zoning and its land-use planning, and we feel that they have been extremely responsive to protecting park values and interests and providing valuable buffers to the park. And for us then to turn around after advocating that they protect those lands to say, well, we don't want an existing road on our land but we think it is all right for you to start building new roads on yours is not a good position to take at this point. It would be inconsistent with a decade's worth of cooperation with the county.

Mrs. CHRISTENSEN. I do have concerns, but if there is a way to work it out, I am willing to be a part of that.

Mr. RADANOVICH. Any other questions? Mr. Souder? Please be aware we have got another panel coming up here.

Mr. SOUDER. If the road is used, would there be an agreement of limitation just to the people who are doing repairs on the tower?

Mr. JONES. Yes, sir, and that is recommended as part of—I believe it is part of the legislation already.

Mr. SOUDER. And I am going to ask them when they come, but how do they do their current repairs? Do they use a helicopter to get there or walk now?

Mr. JONES. Access to the towers. They have been using the road up until when we told them that they could not do it until this issue was resolved.

Mr. SOUDER. And so what has been done since 1997?

Mr. JONES. I honestly don't know.

Mr. SOUDER. OK, because if it is being done by helicopter, that doesn't help wilderness values either.

Mr. JONES. No.

Mr. SOUDER. So I think we are all looking for how to do this, but in a way that doesn't establish a precedent in wilderness areas.

Mr. JONES. We share that concern. As I said, we are trying to find what is the best way to solve a very awkward and, we think, very unique situation.

Mr. RADANOVICH. Any other questions of the panel?

[No response.]

Mr. RADANOVICH. Thank you very much, Mr. Jones.

Mr. JONES. Thank you, Mr. Chairman.

Mr. RADANOVICH. With that I will call up the next panel: Mr. Eric Myers, who is the executive director of TelROW Coalition, Washington, D.C.; Mr. Terry Boss, Senior Vice President, Environment, Safety and Operations, Interstate Natural Gas Association of America; Mr. Kenneth P'Pool, Deputy State Historic Preservation Officer, Mississippi Department of Archives; and Mr. Todd Marker, General Manager of RM Broadcasting, from Palm Springs, California.

Gentlemen, welcome, and, Mr. Myers, if you would like to begin your testimony, that would be greatly appreciated. We are going to start the clocks at 5 minutes, so please wrap it up as quickly as you can when coming to that. We are going to have votes at around 3:30, so we would like to get this done before then. So feel free to summarize if you want to.

**STATEMENT OF ERIC D. MYERS, EXECUTIVE DIRECTOR, TELROW COALITION, WASHINGTON, D.C.**

Mr. MYERS. Thank you, Chairman Radanovich, and hopefully we can all take a cold glass of water and move on from trespass for a little while, moving back to rights-of-way.

Good afternoon. My name is Eric Myers, and I am testifying today in my capacity as executive director of the Telecommunications Right-of-Way Coalition, or TelROW. On behalf of TelROW, I would like to thank Chairman Radanovich, Ranking Member Christensen, Representative Cubin, and members of the Subcommittee for convening today's hearing to address important issues covered by H.R. 3258, the Reasonable Right-of-Way Fees Act.

TelROW's members, including companies and trade associations in the telecommunications and energy sectors, operate a network of more than 100,000 miles of fiber-optic cable and more than 700,000 miles of electric transmission line across the United States. Some of this critical infrastructure crosses Federal public lands.

Commission providers and other users of rights-of-way pay the Federal Government for the use. In the past, these fees have been based on the land value and the physical impact of the utility project. Recently, however, the BLM and the U.S. Forest Service proposed to increase right-of-way fees by changing the basis of their calculation and abandoning existing regulations. These interim proposed policies capture neither the fair market value of the land nor the impact on Federal lands and resources. Instead, the proposed policies attempt to capture a portion of project revenues

by collecting rates specific to the technology or economic value of the facilities themselves.

These first instances in which new policies were implemented resulted in fees 150 times those published in the established legitimate Federal fee schedules. These increases were implemented overnight, with no formal notice or opportunity for comment. Currently, after much congressional inquiry and stern oversight, the agencies have indefinitely delayed implementation of new fees, but maintain their discretion to do so.

Federal Government appraisers recognize the inappropriate nature of these fee increases in their own internal appraisal handbooks. They state that the Federal Government should not pay inflated technology-based prices when acquiring rights-of-way over lands owned by private citizens or other entities. However, in addressing what a Federal agency may charge for the use of an easement, the participating agencies indicated, quite inconsistently, that they saw no reason why Federal agencies could not charge the public these much higher technology-based rates.

The agencies currently administer rights-of-way through a single, consistent linear fee schedule and have indicated their intention to increase fees for fiber-optic rights-of-way first and then proceed to reissue fees for other facilities, such as pipelines, power lines, wire lines, et cetera. Past practice to increase these fees was done simultaneously consistent with any change in the value of the underlying land or inflation. The impacts of such fees on our Nation's energy infrastructure could be devastating for commodities and for companies that supply and deliver these services and commodities.

The U.S. Forest Service and BLM have initiated a trend among Federal agencies that manage public lands. The National Park Service and the National Oceanic and Atmospheric Administration have implemented or are considering similar policies, charging even higher fees for the right to cross these lands—in some cases, 4 to 10 times higher than the highest fees we have seen in the BLM and Forest Service context, or 600 to 1,000 times higher in the existing linear fee schedules.

As a matter of fact, this week I learned that one company has been charged $120,000 a year to go 3 miles across the Golden Gate National Recreation Area.

Clearly, these policies have nothing to do with land impact. It is important to note that none of these rights-of-way are established until extensive NEPA analyses have been conducted and deliberate and due care has been taken to prevent and monitor impacts to the environment.

Despite the conclusions of Government studies indicating little or no ecological harm, these agencies have followed the lead of the BLM and the Forest Service in pursuing exorbitant increases in fees for the right to cross public lands. Rights-of-way are an important use of Federal lands whose impact on the underlying value and other uses is minimal. To paraphrase FLPMA, rent for rights of way should be no greater than the value of the rights and privileges authorized by the right-of-way grant or permit and should reflect a public interest in the construction of such facilities.

We recognize that agencies may have in good faith misinterpreted the intent of Congress in determining these new right-of-

way fees, and we believe that through the additional guidance provided by H.R. 3258 and the public rulemaking process, with adequate opportunity for notice and comment, the existing fee schedule can be revised, if necessary, to promote accurate reflections of the value of these rights-of-way.

We look forward to working with Mrs. Cubin, this Committee, Federal land management agencies, and other interested stakeholders pursuant to what we believe is a common goal in the public interest.

I thank you for inviting me to testify today, and I would be happy now to answer or provide written answers to any questions you may have.

[The prepared statement of Mr. Myers follows:]

**Statement of Eric D. Myers, Executive Director, Telecommunications Right-of–Way Coalition, on H.R. 3258**

Good Afternoon. My name is Eric Myers, and I am testifying today in my capacity as the Executive Director of the Telecommunications Right-of–Way Coalition, or TelROW. On Behalf of TelROW, I would like to thank Chairman Radanovich, Ranking Member Christensen, Representative Cubin, and members of the Subcommittee for convening today's hearing to address the important issues covered by H.R. 3258, the Reasonable Right-of–Way Fees Act.

TelROW's members, including companies and trade associations in the communications and energy sectors, operate a network of more than 100,000 miles of fiber optic cable, and more than 700,000 miles of electric transmission lines, across the United States. Some of this critical infrastructure, especially in the west, crosses Federal public lands. The companies who formed this coalition were motivated by several interim and proposed policies developed by the Bureau of Land Management and U.S. Forest Service (See Attachments). We support H.R. 3258 as a necessary amendment to the Federal Land Policy and Management Act (FLPMA), to ensure a reasonable approach to collecting right-of-way rents. H.R. 3258 ensures that right-of-way rents are consistent with the fair value of the right to cross Federal lands, thus promoting sound management of these public resources, and advancing the public's interest in these lands.

*Introduction and Background*

Communications providers and other operators and owners of linear infrastructure pay the Federal Government for the use of rights-of-way (ROW) over lands administered by the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and other Federal agencies. Currently, the fees for rights-of-way on Federal lands have been based on a proxy for the market value of the land, the size of the right-of-way, and the number of cables, pipes, or other distinct facilities. These calculations are reasonably equivalent to the land value and the physical impact of the utility project.

Recently, however, the BLM and USFS proposed to increase ROW fees, by changing the basis of the calculation for "fiberoptic projects," based on data they believed demonstrated a special, separate "value of fiberoptic use and occupancy." These interim and proposed policies, however, capture neither the fair market value of the land over which fiberoptic cable is conveyed, nor the consequent impact on Federal lands and resources. Instead, the proposed policies attempt to capture a portion of telecommunications revenues, by charging for uses not based on the value of land to the Federal Government or impacts thereto, but by rates specific to the technology or economic value of the facilities themselves. We believe these policies are based on arbitrary assumptions and anecdotal evidence regarding the "market" value of telecommunications easements across private, state, and municipal lands, sometimes in distant, urban settings. The first instances in which these proposed and interim policies were implemented resulted in fees 150 times those in the published, established, and legitimate Federal fee schedules. The USFS and BLM have failed to justify such large increases based either on actual land value or on land impact. Currently, after much Congressional inquiry and stern oversight, the agencies have indefinitely delayed implementation of new fees.

*The Proposed Methodologies are Unjust*

The methodologies proposed by the BLM and USFS are inconsistent with current regulations and policies applied to other infrastructure providers. Forcing critical infrastructure providers to pay dramatically increased fees for the use of Federal lands, particularly where the new use is similar or compatible to other existing uses, involving impacts identical to or less than uses for which a lower fee is charged, is inconsistent. Such policies protect neither the public land nor the public interest. Such policies do not accomplish the goals of protecting the value of Federal lands or natural resources. They amount to a tax on the services conveyed by these facilities. Furthermore, under such policies, Federal lands and other reservations become roadblocks or toll booths to interstate and international commerce.

*Agency Officials Have Recognized the Inequity of These Policies*

The Interagency Land Acquisition Conference, an ad hoc group of appraisers and real estate professionals in the Federal Government, recognized the inappropriate nature of these technology-based valuations in their most recent revision to the Uniform Appraisal Standards for Federal Land Acquisition (see Attachment). The Conference indicated that the Federal Government should not pay inflated technology-based prices when acquiring rights-of-way over lands owned by private citizens or other entities. However, in addressing what a Federal agency may charge for the use of an easement on Federal land, the participating agencies indicated, quite inconsistently, that they saw no reason why Federal agencies could not charge private easement holders these technology-specific rates. Thus, the agencies made clear that, technology-based prices for leasing rights of way are inappropriate when a Federal agency has to pay such inflated rates, but may be perfectly appropriate when the Federal agencies are the recipient of such fees. In both cases, we are talking about definitions of "fair market value." It is important to note that many of the same appraisers who crafted this inconsistent internal agency policy are the same individuals advising the new fiberoptic fee schedules.

*The Proposed Methodology is Contrary to Real Estate Appraisal Principles*

Generally speaking, easement values are determined to be somewhat less than the fee value of the land upon which the easement is established, since these rights-of-way consist of a limited contract to use lands for a specific purpose. These valuations are guided by two basic principles, 1) "before and after" value, which ascribes a value to easements equal or similar to the reduction of value or utility resulting from an easement use, and 2) "willing buyer-willing seller," a principle which suggests that the parties to an easement transaction enter as willing and equal participants, with an array of possible options. The approach taken by Federal agencies focuses on situations where cities or other entities have incorporated franchise-like fees into required easement payments, or where individual landowners have leveraged their ability to "hold out" or obstruct established rights across adjacent lands to obtain higher payments for easements on their land. These cases are exceptional, and should not alter the established principles, which base easement payments on the underlying property value.

*Land Value Is the Proper Measure of Fair Market Value for Rights-of–Way*

Since there is no true market in Federal land, overall valuation, as well as the cost of the land impact, must be estimated. While it is appropriate for the government to come up with some methodology to estimate values, in this case, we believe they have chosen to apply inappropriate principles. An estimation of ROW value must be based on the estimated value of the land, and on the estimated impact of the project on the value of the remaining land, not on the value of technology installed or associated commerce. A cost or impact-based principle is the universal methodology used by right-of-way project developers to determine constitutional levels of payment for rights-of-way obtained from private parties in condemnation proceedings. This is how the Federal Government determines how much to pay private land owners when they acquire rights-of-way for roads or other public projects.

*The Market Value of Most Federal Land is Low*

Government-held land is subject to far more restrictions than is similar private property. This is because Federal statutes restrict activities on Federal lands to accomplish other public objectives. For instance, Federal easement holders cannot obtain permanent rights-of-way, and must obtain Federal regulatory approval to engage in routine maintenance. Such restrictions increase operating costs, and thus dramatically decrease the value of the Federal land easements. Furthermore, development of Federal lands is limited, as they are not made available for many of the competing uses possible on private lands, and therefore Federal lands are generally of lower real estate value than similar privately-held lands. As a result, any policy

that attempts to draw direct associations between right-of-way fees on private lands and fair equivalents on Federal lands must take into account factors which reduce the utility and value of Federal land easements, and which limit the value of Federal lands.

*The Agency Proposals are Inefficient and Environmentally Unsound*

These new fee schedules, proposed to increase fees incrementally based on the number of users, or are based on the type of technology rather than the land value and use, discourage the construction of dark-fiber or additional unused capacity, which can be utilized at a later date. Discouraging the installation of fiber that may be currently unused simply means that additional capacity needed in the future may require additional complete installations, with the related economic costs and environmental impacts of re-accessing Federal lands and resource areas. Such additional installations would be unnecessary if large numbers of fibers, cables, or ducts, even though underutilized, were installed all at one time, at one fee.

The USFS and BLM, which currently administer ROW through a single, consistent linear fee schedule, have indicated their intention to increase fees for fiber optic rights-of-way first, and then proceed to reissue fees for other facilities, such as pipelines, power lines, water lines, et cetera. As I noted earlier, and as you will hear from my colleague from the Interstate Natural Gas Association of the Americas, the impacts of such fees on our nations energy infrastructure could be devastating for companies that supply or deliver these services and commodities.

USFS and BLM have initiated a trend among other Federal agencies that manage public lands. Through authorizing statutes other than FLPMA, the National Park Service and National Oceanic and Atmospheric Administration have drafted or are considering similar policies charging fees for the right to cross parks and marine sanctuaries with fiber optic cables. It is important to note that none of these rights-of-way are established until extensive NEPA analyses have been conducted, and deliberate and due care has been taken to prevent and monitor impacts to the environment. Despite the conclusions of government studies, indicating little or no ecological harm, these agencies have followed the lead of the BLM and USFS in pursuing exorbitant increases in right-of-way rents and other compensation for the right to cross Federal lands.

*Conclusion*

Rights-of-way for fiber-optic telecommunications and other linear facilities are an important use of Federal lands, whose impact on the underlying value, and other uses of those lands is minimal. To paraphrase FLPMA, rent for rights-of-way should be no greater than the value of the rights and privileges authorized by the right-of-way grant or permit, and should reflect a public interest in the construction of such facilities. Furthermore, we believe that valid, established real estate principles should underlie any regulatory decisions made as to the value of rights-of-way.—TelROW supports passage of H.R. 3258, as well as other regulatory and legislative processes through which a reasonable, practical, and consistent linear right-of-way fee schedule can be developed.

We recognize that these agencies may have, in good faith, misinterpreted the intent of Congress in charging ROW fees, and believe that through the additional guidance provided by H.R. 3258, and a public rule making process with adequate opportunity for notice and comment from all stakeholders (the process through which the existing fee schedule was established), the existing fee schedule can be revised, if necessary, to more accurately reflect the value of these rights-of-way. Prompt resolution of this issue will provide certainty to the purveyors of our Nation's critical infrastructure, who are committed to delivering reliable, secure, and vital products, utilities, and services to America's consumers and growing economy. We look forward to working with Ms. Cubin, this Committee, Federal Land Management Agencies, and other interested stakeholders pursuant to what we believe is a common goal, in the public interest. Thank you again for inviting met to testify today. I would be happy to answer now, or provide written answers, to any questions you may have.

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Mr. RADANOVICH. Thank you, Mr. Myers.

Mr. Terry Boss, Senior Vice President of Environment, Safety and Operations with the Interstate Natural Gas Association of America. Mr. Boss, welcome, and please proceed with your testimony. Feel free to sum up, and please keep it under 5.

**STATEMENT OF TERRY BOSS, SENIOR VICE PRESIDENT, ENVIRONMENT, SAFETY AND OPERATIONS, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA; WASHINGTON, D.C.**

Mr. BOSS. Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify this afternoon. INGAA is the trade association that represents interstate natural gas transmission pipelines in the United States, Canada, and Mexico. Our members deliver over 90 percent of the natural gas consumed in the U.S. via more than 200,000 miles of transmission pipeline systems.

Many of our pipelines in the Western U.S. do traverse either Bureau of Land Management or U.S. Forest Service lands, and we have had a good relationship with those agencies. Therefore, we have a keen interest in how right-of-way fees are assessed by these agencies. The BLM/USFS proposals that we have seen regarding possible new fee schedules for fiber-optic systems have given us great cause for concern. While to date the proposals have dealt only with fiber-optic systems, we are concerned about the precedent that might happen on our right-of-ways, including pipelines. INGAA does support the idea of paying reasonable fees for right-of-way on public lands. We believe H.R. 3258, introduced by Representative Cubin, sets forth reasonable criteria for assessing these fees, and we urge its adoption.

Before describing right-of-way fees, I want to take a moment to talk about the natural as pipeline industry and why our access to the right-of-way is important. One of the key reasons our industry is focused on this issue is the fact that natural gas demand in this country is growing at a rapid rate, and as a result, the pipeline industry will need to grow significantly in order to meet this anticipated opportunity, as demonstrated in this report.

For example, population growth in areas such as Southern California, Arizona, and the Pacific Northwest translates into a need for more pipeline infrastructure, mainly to supply fuel for new clean power generation facilities. It is in the West where the vast majority of this land is located that any significant change in the right-of-way policy is likely to have the greatest effect on consumers. When the pipeline industry heard about the proposed changes in fees on fiber-optic lines, we realized that our own industry might be next.

With this in mind, the INGAA Foundation commissioned a study to examine this issue. I have provided copies of the study to the Subcommittee membership, and I ask that it be made part of today's hearing record.

According to our data, there are about 15,600 miles of pipelines in Federal lands and about 7 percent of the total mileage in the U.S. and more to be built in the future. Most of this pipeline mileage is located on BLM or USFS lands, with about 28 percent of it located on other Federal lands.

The annual fees to use right-of-ways through these Federal lands are currently about $1.6 million for our industry. If we look at some of the potential alternatives for assessing these fees now under consideration, natural gas industry fees could go from $1.6 million to approximately $40 to $150 million per year. This would

assume that BLM and USFS would attempt to place an economic value on that gas moving through there.

As you can see, these would be stunning increases, and they would be borne largely by consumers in the Western U.S..

Of course, assigning economic value to natural gas in our pipelines would not be easy. First, the pipeline operators do not own the natural gas in most of our pipelines. We, as pipelines, are transporters only, just like a trucking company. Customers purchase gas directly from producers or market and pay a set fee to transport it over our system. Therefore, the economic value of the commodity is no longer tied or tracked by the pipeline operator.

Second, the natural gas has become a true commodity. It is traded on open markets, and prices move on a daily basis. The price of natural gas can and does fluctuate significantly over the course of a single year, as we have seen in recent history. Just last year, natural gas prices moved from highs of around $10 to lower than $2 per million cubic feet. Assigning an annual economic value to a commodity which experiences such daily fluctuations would be extremely difficult, if not altogether impractical. As any experienced energy analyst would tell you, predicting natural gas prices for an upcoming year is even more difficult than predicting the weather.

Let me make one final point about basing right-of-way fees on such a concept as commercial value or technology employed. We are concerned that such a fee system would put pressure on the BLM to give priority for new right-of-ways only to those entities that would pay the highest fees. We have witnessed other Federal agencies, namely, the FCC in the case of spectrum auctions, push aside other worthy applications in favor of producing greatest perceived dollars for the treasury. A more balanced approach is needed, one that removes the incentive to assign right-of-way only to the highest bidder and which fairly compensates the Government.

As Representative Cubin has pointed out, the proposed fee structure would harm development of telecommunications and energy infrastructure in rural areas, particularly in the West. Consumers in these areas would bear the cost both in terms of higher prices and in access to critical infrastructure.

INGAA supports a real-world criteria for determining and collecting these fees for a reasonable amount of money, and we believe the bill proposed will help that sort of thing.

I appreciate the opportunity to speak here.

[The prepared statement of Mr. Boss follows:]

**Statement of Terry Boss, Senior Vice President, Environment, Safety and Operations, Interstate Natural Gas Association of America, on H.R. 3258**

Mr. Chairman and Members of the Subcommittee:

Thank you for the opportunity to testify this afternoon. I am Terry Boss, Senior Vice President for Environment, Safety and Operations for the Interstate Natural Gas Association of America (INGAA). INGAA is the trade association that represents interstate natural gas pipelines in the United States, Canada and Mexico. Our members deliver over 90 percent of the natural gas consumed in the US, via more than 200,000 miles of transmission pipeline systems.

Many of our pipelines in the Western U.S. do traverse either Bureau of Land Management (BLM) or U.S. National Forest Service (USFS) lands, and therefore we have a keen interest in how right-of-way fees are assessed by these agencies. The BLM/USFS proposals we have seen, regarding possible new fee schedules for fiber optic systems, have given us great cause for concern. While to date the proposals

have dealt only with fiber optic systems, we are concerned about the precedent that might be established for other rights-of-way, including pipelines. INGAA does support the idea of paying reasonable fees for right-of-way on public lands. We believe H.R. 3258, introduced by Rep. Barbara Cubin, sets forth reasonable criteria for assessing these fees, and we urge its adoption.

*IMPORTANCE OF PIPELINES*

Before describing right-of-way fees, I wanted to take a moment to talk about the natural gas pipeline industry, and why our access to right-of-way is important. One of the key reasons our industry is focused on this issue is the fact that natural gas demand in this country is growing at a rapid rate, and as a result, the pipeline infrastructure will need to grow significantly in order to meet anticipated demand. Pipelines are the only practical method for transporting our product. Small amounts of liquefied natural gas (LNG) are imported into the U.S. via tankers from abroad [1], but in general, the natural gas we consume is produced in North America [2], and transported through pipelines from the wellhead all the way to homes, businesses and power plants. Since natural gas represents 25 percent of all the energy consumed in the United States, pipelines are a critical part of the energy infrastructure we need to fuel our economy and provide the quality of life we expect.

The United States currently consumes about 23 Trillion cubic feet (TCF) of natural gas annually. According to a recent analysis done for the INGAA Foundation [3], that number is expected to grow to 31.3 TCF by 2015, which represents a 34 percent increase in demand in just 13 years. Much of this demand increase is being driven by the growth in gas-fired power generation. Over 90 percent of all new, installed power generation is gas-fired, and the amount of natural gas used to generate electricity is projected to increase by 106 percent between now and 2015. In addition, we are experiencing growth in industrial demand from such major consumers of natural gas as glass, fertilizer and chemical manufacturers.

All this growth translates into the urgent need for more pipeline infrastructure as well as the continued maximum use of the existing infrastructure. The current network of pipelines is simply not sufficient to meet the demands of the 30 TCF market. Our analysis estimates that the natural gas industry will require $67.9 billion of investment in pipeline transmission and storage infrastructure from 2001 to 2015 in both the United States and Canada [4]. In total, natural gas pipeline companies will need to install more than 74,000 miles of transmission pipe to meet the growing market for natural gas in the United States (49,500 miles) and Canada (25,000 miles) during this period.

This is a significant challenge for our industry under any circumstances. Because of the growth that the West has experienced in the last decade, and will continue to experience in the decades to come, our industry will have to expand in that region. Areas such as Southern California, Arizona and the Pacific Northwest will all need to construct new natural gas pipeline capacity in the next few years in order to supply fuel to new power generation facilities. It is in the West, where the vast majority of BLM/USFS land is located, that any significant change in right-of-way policy is likely to have the greatest affect on consumers.

*BLM/NFS PROPOSALS*

The Federal Land Policy and Management Act of 1976 (FLPMA) authorizes the BLM to issue permits for the use of rights-of-way across jurisdictional lands. The Act also gives the BLM the authority to collect the "fair market value" for the use of such lands, "using comparable commercial practices." The BLM developed criteria for determining the fair market value for these rights-of-way, and these processes have been the core of the BLM fee structure since 1987. The policy allows BLM to collect the "reasonable costs" associated with a right-of-way.

Beginning in the mid–1990s, both the USFS and the BLM began looking at establishing a new set of criteria for determining fair market value, based in part on assessing the technology or commercial value of the linear facility in question. These efforts have clearly been focused on fiber optic lines, moving beyond questions regarding the implications of land use, and looking more at the commerce associated with a right-of-way. This would represent a major policy shift, and would significantly increase both fees, and the amount of information that would be required to

[1] Less than 1 percent of total natural gas consumed in the U.S. annually is imported as LNG.
[2] Eighty five percent of the natural gas consumed in the U.S. is produced domestically, while about 15 percent of U.S. consumption is imported from Canada.
[3] "Pipeline and Storage Infrastructure for a 30 TFC Market—An Updated Assessment," prepared for the INGAA Foundation by Energy and Environmental Analysis, Inc., January 2002.
[4] $47.7 billion in the U.S., and $16.8 billion in Canada.

determine what might constitute a right-of-way's appropriate fee level. INGAA joins with the members of TeleROW in strongly opposing these proposals.

*POTENTIAL IMPACT ON PIPELINES*

When the pipeline industry reviewed the proposed changes in fees for fiber optic lines, we realized that our own industry might be next. With this in mind, the INGAA Foundation commissioned a study[5] to examine this issue, and assess the potential impact on our business. I have provided copies of the study to the Subcommittee membership, and I ask that it be made a part of today's hearing record.

First, let me provide some background. Interstate natural gas pipelines must first obtain approval from the Federal Energy Regulatory Commission (FERC) before any major construction or expansion can begin. The FERC strongly encourages pipeline operators to work with both private landowners, and with Federal/state agencies, in order to resolve any questions about pipeline route, construction practices and land-use compensation. The FERC coordinates the permitting process required for the pipeline, included approval of necessary rights-of-way through Federal lands. During construction, the right-of-wide may be from 75 to 100 feet wide, in order to accommodate workers and machinery, but pipeline operators are usually required to reduce the right-of-wide width and restore the area to a generally original condition once construction is complete. After construction, a pipeline right-of-way is typically 50 feet wide, and must be kept clear of trees and permanent structures primarily for safety reasons.

One of the key issues associated with new pipeline construction is working fairly and equitably with private landowners. As I mentioned, the FERC strongly encourages pipeline operators to negotiate directly with private landowners about questions of pipeline route and land-use compensation. Some of the criteria generally used to determine compensation include the diminution of property value associated with the right-of-way, and costs associated with restoring the right-of-way to a usable condition. Using the power of eminent domain, the FERC can grant condemnation authority to the pipeline if a landowner is unwilling or unable to negotiate, but more than 90 percent of pipeline right-of-way is typically obtained without using this authority.

According to our data, there are currently about 15,600 miles of interstate natural gas transmission pipeline on Federal lands, or about seven percent of the total mileage in the U.S. Most of this pipeline mileage is located on BLM or USFS lands,[6] with about 28 percent of the total located on other Federal lands. The annual fees to use rights-of-way through these Federal lands are currently about $1.6 million for our industry. Again, let me make the point that, in general, aboveground usage of the land is not restricted by a pipeline right-of-way.

If we look at some of the potential alternatives for assessing right-of-way fees now under consideration, the natural gas pipeline industry's fees could go for $1.6 million per year to $40-$150 million per year. This would assume that the BLM and USFS would attempt to place an economic value on the natural gas moving through our systems on an annual basis, and then tie fees to some percentage of that economic value. As you can see, these would be stunning increases, and they would by and large be borne by consumers living in Western states.

Of course, assigning an economic value to the natural gas in our pipelines would not be easy. First, the pipeline operators do not own the natural gas that moves through their pipelines. As a result of the restructuring of our industry in the 1980s and 90s, interstate pipelines no longer purchase natural gas at one end of their system, and sell it at the other end. The interstate transportation function has been "unbundled" from the gas commodity. We as pipelines are transporters only, just like a trucking company. Customers purchase their natural gas directly from producers or marketers, and pay a set fee to transport their gas over our pipelines. Therefore, the economic value of the commodity (the natural gas itself) is no longer tied to the pipeline operator.

Second, natural gas has become a true commodity. It is traded on open markets and prices move on a daily basis. The price of natural gas can and does fluctuate significantly over the course of a single year, as we have seen in recent history. Just last year, natural gas prices moved from highs of around $10 per Mcf to lower than $2 per Mcf. Assigning an annual economic value to a commodity which experiences such daily price fluctuations would be extremely difficult, if not altogether impractical. As any experienced energy analyst would tell you, predicting natural gas prices for an upcoming year is even more difficult than predicting the weather.

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[5] "BLM & U.S. Forest Service Rental Valuation Impact Study," prepared for the INGAA Foundation by Houston Energy Group, LLC, November, 2001.

[6] About 6840 miles on BLM lands, and 4,350 miles on NFS lands.

Building an expensive right-of-way fee schedule around such predictions would be a recipe for failure.

Let me make one final point about basing right-of-way fees on such concepts as commercial value or technology employed. We are concerned that such a fee system would put pressure on the BLM and USFS to give priority for new rights-of-way only to those entities that could pay the highest fees. We have witnessed other Federal agencies—namely the Federal Communications Commission, in the case of spectrum auctions—push aside other worthy applications in favor of producing the greatest perceived dollars for the Treasury. Just like with radio frequency spectrum, however, there are plenty of legitimate uses for rights-of-way across Federal lands, and they don't always involve applications associated with the highest fees that can be generated. A more balanced approach is needed—one that removes the incentive to assign right-of-way only to the highest bidder, AND which fairly compensates the government.

*NEED FOR LEGISLATION*

As Representative Cubin has pointed out, the proposed BLM/USFS fee structure would harm the development of telecommunications and energy infrastructure in rural areas, particularly in the West. Consumers in these areas would bear the costs, both in terms of higher prices and in access (or lack thereof) to critical infrastructure.

INGAA supports the development of real-world criteria for determining and collecting reasonable right-of-way fees on BLM and USFS lands. We believe the Cubin bill, H.R. 3258, represents the best approach to developing these fees. The legislation would determine a fair market value for right-of-way in question by looking at some of the same criteria we currently use in the pipeline industry for valuation of right-of-way on private land, such as the value of the land encumbered, the diminution of value associated with the right-of-way, or the costs associated with restoring the land to its original use. H.R. 3258 also puts to rest the idea of trying to determine an economic or commercial value of the commodity or service being moved over a right-of-way, and instead clarifies that any fee should be based on the value of the land in question.

*CONCLUSION*

As our industry expands over the next 20 years, we will be maintaining and expanding our pipeline rights-of-way on Federal lands in order to serve energy consumers in the Western U.S. The members of INGAA are willing to pay their fair share of the costs associated with Federal right-of-way usage, and we believe H.R. 3258 provides a fair and reasonable process for developing these fees. I want to thank you once again, Mr. Chairman, for the opportunity to testify today, and I would be happy to answer any questions.

**NOTE; A report accompanying Mr. Boss' statement entitled "BLM & U.S. Forest Service Rental Valuation Impact Statement" has been retained in the Committee's official files.**

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Mr. RADANOVICH. Thank you, Mr. Boss.

Mr. Kenneth P'Pool, the Deputy State Historic Preservation Officer with the Mississippi Department of Archives. Welcome and please begin your testimony. Please keep it within 5 minutes.

## STATEMENT OF KENNETH H. P'POOL, DEPUTY STATE HISTORIC PRESERVATION OFFICER, MISSISSIPPI DEPARTMENT OF ARCHIVES AND HISTORY, JACKSON, MISSISSIPPI

Mr. P'POOL. I am very grateful to be here to testify on behalf of H.R. 3307. I will try to summarize my comments as submitted in my written testimony.

Sites associated with the Civil War speak profoundly to the struggles that transformed our diverse States and peoples into a cohesive Nation. As Southern author Robert Penn Warren rightly stated, "America became a nation only with the Civil War." No sites tell that compelling story better than those associated with the Vicksburg campaign.

General Grant's Vicksburg campaign is believed by many historians to be the most decisive of the Civil War. It was the most complex, combined operation ever undertaken by American armed forces prior to World War II. The great significance in this issue of acquiring Pemberton's Headquarters is that it was the intent of both Union and Confederate veterans who planned the Vicksburg National Military Park back in the 1890's that the headquarters of both Grant and Pemberton be included within the park. Because there was not a willing seller at that time for Pemberton's Headquarters since it was in private ownership, acquisition was not pursued. Now the owner of Pemberton's Headquarters is a willing seller, and we have an opportunity to fully interpret the siege of Vicksburg as envisioned by the veterans themselves and to accomplish the expanded interpretive mission assigned to the Vicksburg Military Park by Congress in 1990.

Because of the location of Pemberton's Headquarters at the same general area in which the Union Army administered the occupation of the city of Vicksburg during the Reconstruction Era, Pemberton's Headquarters provides an ideal location within the heart of Vicksburg to interpret not only the siege but also the occupation and Reconstruction period, including the significant roles played by African Americans during those periods.

Economic development is another important aspect of this. The National Park Service presence in downtown Vicksburg at Pemberton's Headquarters will no doubt attract more visitors from the park into the city, generating an important economic impact on the city's heritage tourism economy.

A study in Virginia a few years ago indicated that visitors to Virginia's Civil War sites expended almost twice as much money as other visitors to their State. We expect that similar statistics can be expected for Vicksburg as well.

Pemberton's Headquarters was restored about 3 years ago, so additional renovation costs for the building should be modest. Also, real estate and construction costs in Mississippi are also modest in comparison with most other States.

Passage of H.R. 3307 is strongly supported by the city, the county, and State governments. Therefore, I respectfully request that the Subcommittee recommend authorization of H.R. 3307.

I would be happy to answer any questions that you have.

[The prepared statement of Mr. P'Pool follows:]

**Statement of Kenneth H. P'Pool, Deputy State Historic Preservation Officer, Mississippi Department of Archives and History, on H.R. 3307**

Mr. Chairman and distinguished members of the House Subcommittee on National Parks, Recreation, and Public Lands:

I am Kenneth H. P'Pool, Deputy State Historic Preservation Officer for Mississippi and Director of the Historic Preservation Division of the Mississippi Department of Archives and History. I am very pleased to have the opportunity to present testimony to you in support of H. R. 3307, to authorize the Secretary of the Interior to acquire the property known as Pemberton's Headquarters and to modify the boundary of the Vicksburg National Military Park to include that property.

Although our country is blessed with many places of great historic value, those associated with the Civil War speak most profoundly and eloquently to the struggles that shaped our American democracy and transformed our diverse states and peoples into a cohesive union. As author Robert Penn Warren wrote, "America became a nation only with the Civil War." No Civil War sites tell the stories of valor, commitment, and sacrifice exhibited by Northerners and Southerners, blacks and

whites, during that conflict better than those associated with the Vicksburg Campaign.

Early in the war, Abraham Lincoln recognized Vicksburg, the "Gibraltar of the Confederacy," as "the key" to controlling the Mississippi River and severing the Confederacy in half. As the Vicksburg Campaign developed, it resulted in a regional operation involving major military actions in Tennessee, Arkansas, and Louisiana, as well as Mississippi.

During the winter of 1862–63, Union commander Major Gen. Ulysses S. Grant conducted a series of amphibious operations, referred to as Bayou Expeditions, against Vicksburg, but all failed. Finding it impossible to approach Vicksburg through the bayous of the Mississippi Delta, in the spring of 1863, Grant embarked upon a bold and risky strategy to march his army of 45,000 men down the Louisiana side of the Mississippi, cross the river below Vicksburg, and attack the city from the south. Repulsed by the Confederate forts at Grand Gulf in his first attempt to cross, Grant undauntedly marched his troops further south and stormed across the river at Bruinsburg. Rapidly advancing on a 200-mile-long triangular route (first northeastward then westward), along sunken roads, over rugged terrain, and through dense forest and farmlands, Grant engaged and decisively defeated the Confederates in fierce battles near Port Gibson on May 1, 1863, Raymond on May 12, Jackson (the state capital) on May 14, Champion Hill on May 16, and Big Black River Bridge on May 17. After two failed attempts to take "fortress Vicksburg" by storm, Grant laid siege to the city for six weeks. Cut off from supplies and reinforcements and pounded mercilessly by Union land batteries and gunboats, Confederate commander Lt. Gen. John C. Pemberton was forced to surrender Vicksburg on July 4, 1863.

Grant's Vicksburg Campaign is believed by many historians to be the most decisive of the Civil War and, perhaps, the most brilliant offensive campaign ever undertaken in North America. It was also the most complex combined operation ever attempted by American armed forces prior to World War II. The loss of Vicksburg, perhaps more than any other single event of the war, spelled doom for the Confederacy.

Pemberton's Headquarters, also known as the Willis–Cowan House, is a two-story Classical–Revival mansion located in the heart of Vicksburg, Mississippi. Constructed in the 1830s, the house was used during the 1863 Siege of Vicksburg as the headquarters of Confederate Lt. Gen. John C. Pemberton. It was from this building that Pemberton directed the doomed defense of Vicksburg, and here also on July 3, 1863, that he held a council of war with his subordinates to discuss plans for surrendering the city to General Grant. On the next day, Pemberton's army, which had managed to defend Vicksburg through forty-seven days of bloody siege, solemnly surrendered. Grant's success in capturing the "Gibraltar of the Confederacy" ended the dramatic Vicksburg Campaign, securing the Mississippi River for the Union and splitting the Confederacy in half. As historian Bruce Catton noted, the loss of Vicksburg was "a mortal wound to the Confederacy."

Pemberton's Headquarters is situated in an area of the city that suffered severely under the relentless Union siege bombardment. Its acquisition for inclusion in the Vicksburg National Military Park would add a greater dimension to the interpretation and understanding of what was perhaps the most horrific siege ever inflicted upon an American city. In planning for creation of the Vicksburg National Military Park in the 1890s, it was the desire and recommendation of both Union and Confederate veterans of the Siege of Vicksburg that the headquarters of both commanders be included in the park. While Grant's headquarters site was included in the confines of the park as established in 1899, Pemberton's Headquarters was at the time in private ownership and unavailable for public acquisition. Because the current property owner is a willing seller, however, we now have the opportunity to fully interpret the Siege of Vicksburg as originally envisioned by the veterans of the conflict.

In 1976, Pemberton's Headquarters was designated a National Historic Landmark, primarily for its important role in the Siege of Vicksburg. However, the building is believed to have also been used by Union officers during their subsequent occupation of the city, as they did other adjacent and nearby structures. For example, Pemberton's Headquarters is located next door to the Balfour House, which served as Major Gen. James B. McPherson's headquarters during the Union occupation of Vicksburg. Across the street from Pemberton's Headquarters is the former Sisters of Mercy Convent, which was also converted to military use after the surrender of the city. The Sister's of Mercy are renowned for having organized one of Mississippi's first schools for the education of African Americans. The historic Warren County Courthouse, where the military administration of the occupied city was conducted throughout the period of Reconstruction, is only four blocks away, as is

also the site of the 1865 to 1869 state headquarters of the Bureau of Freedmen's Affairs.

In 1990, P.L. 101–442 charged the Vicksburg Military Park "'to interpret the campaign and siege of Vicksburg from April 1862 to July 4, 1863, and the history of Vicksburg under Union occupation during the Civil War and Reconstruction." Located within one of Vicksburg's most historic districts and adjacent to the command center of the Union occupation of the city, Pemberton's Headquarters is ideally situated for the Park to address both the siege and occupation aspects of this expanded interpretive mandate, as well as to interpret the significant roles played by African Americans during the Vicksburg Campaign and the period of Reconstruction.

Finally, the inclusion of Pemberton's Headquarters in the Vicksburg National Military Park would provide a mechanism for attracting more of the approximately one million battlefield visitors annually from the park on the edge of town into Vicksburg's historic downtown districts. The economic benefits of increased tourism to the downtown area would be tremendous, as many visitors would no doubt enjoy the many museums, tour homes, bed-and-breakfast accommodations, shops, restaurants and other amenities that are within easy walking distance of Pemberton's Headquarters.

Linkage between the Vicksburg National Military Park and Vicksburg's historic downtown has been cited as vital to the city's economy by several economic impact studies, and is strongly supported by local leaders, including the present mayor, the Honorable Laurence Leyens, and his predecessor, the Honorable Robert Walker, the city's first African American mayor. Acquisition of Pemberton's Headquarters by the Vicksburg National Military Park would establish a National Park Service presence in downtown Vicksburg, which would further enhance the park's role as a good citizen of Vicksburg and Warren County.

For these reasons, I am happy to support H. R. 3307, which will authorize acquisition and incorporation of Pemberton's Headquarters into the Vicksburg National Military Park. Passage of this bill will provide further protection and interpretation for one of America's most important historic places.

Therefore, I respectfully request that the Subcommittee recommend authorization of H. R. 3307

Thank you.

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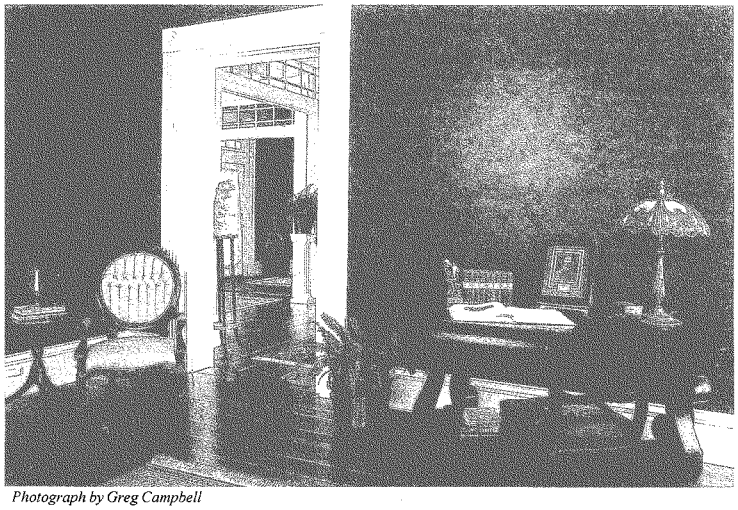
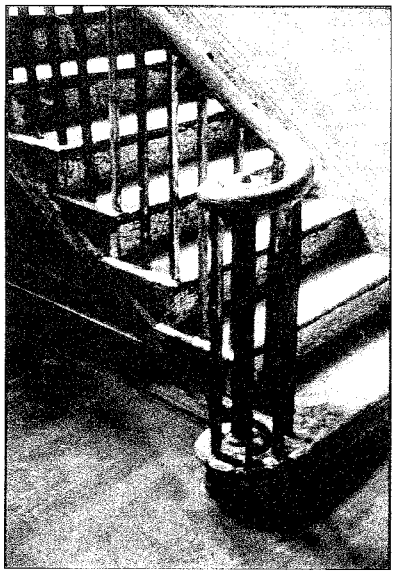
[Attachments to Mr. P'Pool's statement follow:]

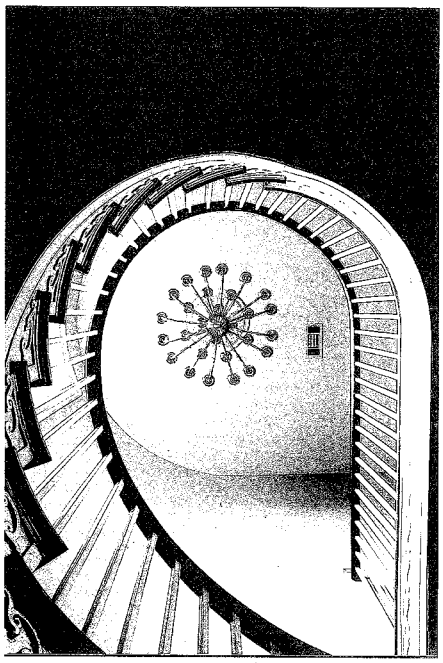
The image above, provided by the American Battlefield Protection Program of the National Park Service, shows the Pemberton Headquarters (left) and the Balfour House (right), which was used as the headquarters of Union Maj. Gen. James McPherson. From this first-story room (below), which served as Lt. Gen. John C. Pemberton's office during the Siege of Vicksburg, the decision was made to surrender the city to U. S. Grant.



*Photograph by Greg Campbell*



One of the most impressive features of Pemberton's Headquarters is the graceful spiraling stair, which is evidence of the fine craftsmanship and intact nature of the building's interior.



*Photograph by Greg Campbell*

Front view, Pemberton's Headquarters, also known as the Willis-Cowan House. The house has fine Greek Revival details, such as the classical columns (see detail right) flanking the front doors on both stories.

Mr. RADANOVICH. Thank you, Mr. P'Pool

Now, that bell you heard was a vote call. We have got about 5 more minutes. I am not sure—I think that everybody has been polled—that we are going to have a lot of time for questions afterwards. So, Mr. Marker, if you want to give your testimony, I think that we are then going to conclude the hearing, but allow for members to submit written questions for you to answer.

Mr. Marker, if you want to begin, and please keep it under 5, that would be great.

**STATEMENT OF TODD MARKER, GENERAL MANAGER, RM BROADCASTING, PALM SPRINGS, CALIFORNIA**

Mr. MARKER. My name is Todd Marker. I am managing partner of RM Broadcasting, a California corporation which owns and operates two FM radio broadcast stations in the Palm Springs, California, area—KPLM and KJJZ. These two stations, plus another FM radio station, KMRJ, and the University of Southern California's Classical Music/National Public Radio Station, KPSC, transmit their broadcast signals from a radio tower facility on land which RM Broadcasting owns in an area called Indio Hills, located in the little San Bernardino Mountains. This site is accessed by a road, a portion of which, approximately seven-tenths of a mile, crosses into the Joshua Tree National Park zoned wilderness area. RM Broadcasting is seeking permission to continue using this short portion of the road because: the area is remote and inhospitable to the extent that it is not utilized by the public; permission has previously been given by the Park Service to use the road subject to certain conditions which were fulfilled; no harm has been done or is being done to the environment; the road has been used without other complaints, difficulties, or problems for nearly 20 years; the road is used by the National Park Service, the Imperial Irrigation District, the Metropolitan Water District for official businesses; the incursion is insignificant in length; no further incursion into the wilderness area will occur; elimination of the incursion is not possible due to the unsuitable terrain.

The RM Broadcasting tower site, along with its access road, have been used by KPLM since the station was put on the air in 1983. The site and the access road were built by KPLM's original owners, RTC Broadcasting. In 1986, KPLM was acquired by R Group Management Company. In 1987, the original road was improved by the R Group Management Company. At that time, National Park Service Superintendent Rick Anderson, since retired, notified R Group Management that the road was trespassing on the wilderness area. R Group Management subsequently agreed that there was trespass but was able to negotiate an agreement with former Superintendent Anderson. See Exhibits A, B, and C which I have got attached to the written testimony.

This agreement stated that the R Group Management would be able to continue to use the road subject to the conditions that a gate and a fence be constructed and maintained, that grading would be contoured to appear as natural as possible, and that public service announcements for the National Park Service would be broadcast by KPLM. R Group Management complied with these conditions, and RM Broadcasting, which is the present owner of KPLM and the tower site property, has continued to maintain the road, gate, fence, and continues to broadcast public service announcements for the National Park Service.

This is where the matter stood until March 1997 when RM Broadcasting was notified by the new superintendent of the National Park Service's Joshua Tree office, Mr. Ernest Quintana, that he was reopening the issue of the tower site access road's incursion

into the wilderness area. Mr. Quintana's position was that the road needed to be removed and that access through the wilderness area could only take place on foot or by mule.

Unfortunately, accessing the tower site on foot or by mule are not practical. Distances involved on either side of the contested area, the weight of the necessary equipment, and the need to get to the site quickly and on short notice preclude these options. Reworking the road to avoid wilderness area land would require construction on unsuitable terrain which the local zoning authority would not permit.

For these reasons, RM Broadcasting saw no other solution than to respectfully ask Congresswoman Mary Bono, in whose district RM Broadcasting maintains its offices, to intercede on its behalf. Congresswoman Bono, after carefully considering the situation, agreed that it would be onerous and unreasonable for RM Broadcasting to discontinue using the disputed portion of the tower site access road. Congresswoman Bono then arranged a meeting between the principal parties in the matter on August 27, 2001, in her Palm Springs office.

The co-owners of RM Broadcasting, Robert Rivkin and Todd Marker, met with Ernest Quintana and Mr. John Reynolds, the regional director of the National Park Service, Congresswoman Bono and her staff. After all parties were heard and after carefully considering the situation, Mr. Reynolds recommended that Congresswoman Bono sponsor a bill which would allow RM Broadcasting to continue to use the access road to its tower site, and he affirmed the National Park Service would have no objection to such a bill.

This is the bill, H.R. 3718, which is now before you for your vote. RM Broadcasting hopes that you will allow it to continue to enjoy the use of the tower site access road as it has for almost the past 20 years.

Attached you will see three different maps as well.

Thank you.

[The prepared statement of Mr. Marker follows:]

**Statement of Todd Marker, RM Broadcasting, Palm Springs, California, on H.R. 3718**

SYNOPSIS

RM Broadcasting, a California corporation, owns and operates two FM radio broadcast stations in Palm Springs California, KPLM and KJJZ. These two stations, another FM radio station, KMRJ, and the University of Southern California's Classical Music/National Public Radio FM station, KPSC, transmit their broadcast signals from a radio tower facility on land which RM Broadcasting owns in an area called Indio Hills located in the Little San Bernardino Mountains. This site is accessed by a road, a portion of which (approximately 7/10ths.of a mile) crosses into The Joshua Tree National Park zoned Wilderness Area. RM Broadcasting is seeking permission to continue using this short portion of the road because:

- the area is remote and inhospitable to the extent that it is not utilized by the public
- permission has previously been granted by the Park Service to use the road subject to certain conditions which were fulfilled
- no harm has been done or is being done to the environment
- the road has been used without other complaints, difficulties or problems for nearly twenty years
- the road is used by the National Park Service, the Imperial Irrigation District, the Metropolitan Water District for official business
- the incursion is insignificant in length
- no further incursion into the Wilderness Area will occur

• elimination of the incursion is not possible due to unsuitable terrain.

BACKGROUND

The RM Broadcasting tower site along with its access road have been used by KPLM since the station was put on the air in 1983. The site and access road were built by KPLM's original owner, RTC Broadcasting. In 1986 KPLM was acquired by the R Group Management Company. In 1987 the original road was improved by the R Group Management Company. At that time, National Park Service Superintendent Rick Anderson, since retired, notified R Group Management that the road was trespassing on the Wilderness Area. R Group Management subsequently agreed that there was trespass but was able to negotiate an agreement with former Superintendent Anderson (exhibits A, B, C). This agreement stated that R Group Management would be able to continue to use the road subject to the conditions that a gate and fence be constructed and maintained, that grading would be contoured to appear as natural as possible, and that Public Service Announcements for the National Park Service would be broadcast by KPLM. R Group Management complied with these conditions and RM Broadcasting (the present owner of KPLM and the tower site property) has continued to maintain the road, gate and fence and continues to broadcast Public Service Announcements for the National Park Service.

This is where matters stood until March of 1997 when RM Broadcasting was notified by the new Superintendent of the National Park Service's Joshua Tree Office, Mr. Ernest Quintana, that he was reopening the issue of the tower site access road's incursion into the Wilderness Area. Mr. Quintana's position was that the road needed to be removed and that access through the Wilderness Area could only take place on foot or by mule.

Unfortunately, accessing the tower site on foot or by mule are not practical. Distances involved on either side of the contested area, the weight of necessary equipment, and the need to get to the site quickly and on short notice preclude these options. Reworking the road to avoid Wilderness Area land would require construction on unsuitable terrain which the local zoning authority would not permit.

For these reasons, RM Broadcasting, saw no other solution than to respectfully ask Congresswoman Mary Bono (44th. Congressional District), in whose district RM Broadcasting maintains its offices, to intercede on its behalf. Congresswoman Bono, after carefully considering the situation, agreed that it would be onerous and unreasonable for RM Broadcasting to discontinue using the disputed portion of the tower site access road. Congresswoman Bono then arranged a meeting between the principal parties in the matter.

On August 27th., 2001, in her Palm Springs Office, the co-owners of RM Broadcasting, Robert Rivkin and Todd Marker, met with Mr. Ernest Quintana, Mr. John Reynolds, the regional director of The National Park Service, Congresswoman Bono, and her staff. After all parties were heard and after carefully considering the situation, Mr. Reynolds recommended that Congresswoman Bono sponsor a bill which would allow RM Broadcasting to continue to use the access road to its tower site and he affirmed that the National Park Service would have no objection to such a bill.

This is the bill, H.R. 3718 which is now before you for your vote. RM Broadcasting hopes that you will allow it to continue to enjoy the use of the tower site access road as it has in the past.

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Mr. RADANOVICH. Thank you very much. I appreciate your testimony. Again, we have got 6 minutes left to vote, so I think with that, we will conclude this hearing. But members are encouraged to submit questions that they might have asked to each one of these witnesses, and I am sure they will be happy to respond to any one of those, which will contribute to making this hearing complete.

I want to thank every witness for being here, and your testimony was much appreciated. Thank you, and with that, this hearing is closed.

[Whereupon, at 3:35 p.m., the Subcommittee was adjourned.]

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